United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol. 142 WASHINGTON, THURSDAY, SEPTEMBER 19, 1996 *No. 130*

House of Representatives

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As the night brings the myriad stars to view and the day is warmed by the Sun, we are witnesses to the marvels of Your creation, O God, and the beauty of every living thing. In this world You have created the challenges and choices that are before Your people each day. May Your good Spirit, O gracious God, that points us in the way and heals us from all guilt and transgression, encourage us to make those choices that advance the cause of justice and promote the presence of virtue. May Your strong hand, that created the order of the heavens and the wonders of the Earth, guide, guard, and gird each person along the daily path. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. LAHOOD. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. LAHOOD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to the provisions of clause 5 of rule I, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Washington [Ms. DUNN] come forward and lead the House in the Pledge of Allegiance.

Ms. DUNN of Washington led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment bills, a joint resolution, and a concurrent resolution of the House of the following titles:

H.R. 1772. An act to authorize the Secretary of the Interior to acquire certain interests in the Waihee Marsh for inclusion in the Oahu National Wildlife Refuge Complex;

H.R. 2909. An act to amend the Silvio O. Conte National Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire lands for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands;

H.R. 3676. An act to amend title 18, United States Code, to clarify the intent of Congress with respect to the Federal carjacking prohibition;

H.R. 3802. An act to amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes;

H.J. Res. 191. Joint resolution to confer honorary citizenship of the United States on Agnes Gonxha Bojaxhiu, also known as Mother Teresa; and

H. Con. Res. 120. Concurrent resolution supporting the independence and sovereignty of Ukraine and the progress of its political and economic reforms.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3675) ''An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes.''

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 982. An act to protect the national information infrastructure, and for other purposes;

S. 1090. An act to amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes;

S. 2006. An act to clarify the intent of Congress with respect to the Federal carjacking prohibition; and

S. 2007. An act to clarify the intent of Congress with respect to the Federal carjacking prohibition.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). The Chair will entertain ten 1-minutes on each side.

REFORM THE IRS

(Ms. DUNN of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DUNN of Washington. Mr. Speaker, today I would like to present you with a clear and convincing contrast of two visions for America: The Republican vision and the Democrat vision.

First, the Democrat vision:

In Monday's Washington Post my good friend, the gentleman from New York, CHARLIE RANGEL, the House Ways and Means Democrat in line to become chairman of the committee if the Democrats pull off a miracle, defended the IRS and said, ''We have the best and fairest tax collection system in the world.''

Hmmm.

Now, for the Republican vision:

Earlier this month Bob Dole said, ''It's time to end the IRS as we know it.'' He is calling for putting the word ''service'' back in the Internal Revenue Service by requiring IRS employees to help taxpayers understand the law rather than simply punish Americans for misapplying it.

I like the second vision, and I bet America will too. We need a solution to our IRS problem that empowers the hard-working American taxpayer. We need to reform the IRS.

ETHICS COMMITTEE PROCESS IS DEGENERATING

(Mr. FAZIO of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAZIO of California. Mr. Speaker, I want to talk today about a process that lies at the heart of this House's reputation, the Ethics Committee process.

Its strength historically has been the ability of Democrats and Republicans to separate nuisance complaints from substantive charges important to the reputation of this House and to pursue such matters with diligence no matter where that takes it.

As a former member of the Ethics Committee, 8 years as a matter of fact, I cast some of the toughest votes of my congressional career, just as many others who have served on the Ethics Committee have done on a bipartisan basis. We cast them because we believe the reputation of this House is more important than any Member. I underline any Member.

I believe this Republican-controlled House has done tremendous damage to an already fragile process. The evidence: A year-long delay in appointing a special counsel in a case involving the leadership; the GOP leadership's initial refusal last December to even grant the Committee on Standards of Official Conduct floor time for a bipartisan recommendation on book royalties; now unreasonable delays in making an important report public.

We are watching the Committee on Standards of Official Conduct process completely degenerate.

FORTY REASONS TO SAY ''NO'' TO CLINTON REELECTION

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, late last week the Boston Globe ran the following article—''Four more years? Here are 40 reasons to say ''no.'' I'd like to share their more amusing reasons to vote against Clinton.

His ''Cabinet that looks like America'' contained 14 lawyers and 10 millionaires; ''100,000 more police on the street.'' Seen them yet?

''A tax cut for the middle class.'' Seen it yet?

George Bush was right: Clinton did want to turn the White House into the waffle house.

Shut down two of the four runways at Los Angeles International Airport so he could have his hair cut aboard Air Force one by Christophe of Beverly Hills; Christophe's going rate: $200 per haircut; Jocelyn Elders; Craig Livingstone.

Clinton went on national television and answered questions about his underwear.

Mr. Speaker, haven't we had enough?

SUPPORT MOTION TO RELEASE REPORT OF SPECIAL COUNSEL

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, I just wanted to follow up on the comments of my colleague of California about the Committee on Standards of Official Conduct.

The complaints that have been filed against the leader now are approximately 2 years old, having been originally filed in September 1994.

POINT OF ORDER

Mr. LINDER. Point of order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. LINDER. Mr. Speaker, the gentleman is referring to matters before the Committee on Standards of Official Conduct, which is against the rules of the House.

Mr. PALLONE. Mr. Speaker, my point is simply——

Mr. LINDER. Point of order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from New Jersey will suspend for a moment.

The Chair sustains the gentleman's point of order just raised. The gentleman from New Jersey may proceed in order.

Mr. PALLONE. Mr. Speaker, I am simply trying to point out that myself and the members of the public, including many of the editorials around the country, the New York Times, feel very strongly that the Committee on Standards of Official Conduct needs to proceed with the investigation in this matter.

We have actually made a motion, which I hope will come up today, asking that the report of the outside counsel be released to the public. I feel very strongly that that report should be released. The time has come to do so.

POINT OF ORDER

Mr. LINDER. Mr. Speaker, point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. LINDER. Mr. Speaker, in spite of the admonition of the Chair, the gentleman continues to refer to matters before the Committee on Standards of Official Conduct.

The SPEAKER pro tempore. Does the gentleman from New Jersey care to be heard on the point of order?

Mr. PALLONE. My only point, Mr. Speaker, is that a motion has been filed that this report should be released.

Mr. LINDER. Point of order, Mr. Speaker.

Mr. PALLONE. I understand it is coming up today.

The SPEAKER pro tempore. The gentleman will suspend.

The Chair sustains the point of order raised by the gentleman from Georgia, and the gentleman from New Jersey must suspend any reference to that matter, since the resolution is not under consideration in the House at this time.

Mr. PALLONE. I understand it will be coming up later today, and I would simply say I will be supporting that motion.

DRUG USE UP UNDER BILL CLINTON

(Mr. DOOLITTLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOOLITTLE. Mr. Speaker, in 1992, before Bill Clinton took over as President, the overall chances that an adolescent used drugs was 1 in 20. In 1995, after 3 years of Bill Clinton, the chances an adolescent was using drugs had skyrocketed to 1 in 9.

Mr. Speaker, our children are being lied to. They are being sold on messages from popular culture, the music industry, and Hollywood that drug use is acceptable; that it is glamorous; and that it is cool. Nothing could be further from the truth. Drugs destroy lives, they destroy families, indeed they destroy freedom.

Under Bill Clinton, the war on drugs has become a small skirmish; a rear guard action. Enforcement is down, interdiction is down, and prison time for drug dealers is down. And this is all compounded by Bill Clinton's own flippant remarks on MTV about his own drug use.

Mr. Speaker, we cannot surrender; we cannot give up; we must fight for our children and fight for their future.

WISHING MY COLLEAGUES WELL

(Mr. JACOBS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JACOBS. Mr. Speaker, for me it is swansong time. I have two suggestions as I take my leave. The first is to my colleagues. Get to know each other and you will like each other. There is a lot to like in every Member of this body. In the words of Edward Wallis Hoch, ''There is so much good in the worst of us and so much bad in the best of us that it hardly becomes any of us to say very much about the rest of us.''

Say a prayer and do what you can for those unfortunate children of God who are addicted to tobacco and other deadly drugs. They will die before their time or wish they could.

As I prepare to yield back the sacred office in which I have been privileged to serve for nearly a third of a century, I wish you all Godspeed. You will remain in my heart and in my prayers forever.

CLINTON NAMES CASTRO APOLOGIST AS CHAIRMAN OF THE CORPORATION FOR PUBLIC BROADCASTING

(Mr. DIAZ-BALART asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DIAZ-BALART. Mr. Speaker, the real President Clinton showed himself by his appointment of Alan Sagner to head the Corporation for Public Broadcasting.

Mr. Sagner is proud of having been a founder of the so-called ''Fair Play for Cuba Committee,'' the most active U.S. pro-Castro group in the history of the Castro regime. In fact, Sagner formed this group during the worst moments of Castro's mass murders and confiscations.

It would have been expected that by this time Sagner would at least admit his mistake, recognize that he failed to see Castro at the beginning of his dictatorship for what he was, a murderer, which he still is. But no, to this day Sagner proudly defends the Fair Play for Cuba Committee. Here is a fellow who still refuses to acknowledge the gulags, the mass executions, the political prisons, the totalitarian oppression, as the essence of the Castro regime; and he is now the head of the Corporation for Public Broadcasting.

Shameful appointment, Mr. President. Find someone else.

THE IRS BUREAUCRACY

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the IRS told Joan Kilburn of Nevada she owed $92,000 that she said she did not. The IRS says, look, pay the $92,000, and we will leave you alone. Joan Kilburn said, you are wrong. And they said, prove it.

After 18 months, thousands of dollars, Joan Kilburn proved a very simple fact. Her ex-husband owed the money and owed the money before they were married. They finally agreed.

Ladies and gentlemen, tell me what has happened in our country when a Government bureaucrat can look at a citizen and say prove it. Prove it, and we will leave you alone.

□ 1015

God Almighty, if we want to reform the IRS, then change the burden-of-proof law. In America, a person is innocent until proven guilty. Where did we allow the IRS to go off half-cocked, accusing our citizens of wrongs without proving it? Joan Kilburn, bravo.

I yield back the balance of all those penalties.

AMERICANS LIKE TAX REFORM

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, throughout the 104th Congress no issue has struck a chord with the American people like tax reform: Fundamental radical tax reform to make paying taxes simpler and fair, tax reform that will get rid of the IRS.

This does not come from tax cheaters. It comes from hard-working Americans who are tired of being intimidated by their own Government in the form of the IRS.

During one of my meetings in August, I was given this very beautiful piece of modern art that I am wearing today, this T-shirt, to show how strongly people feel about the IRS. They said, take this back to Washington and tell them that we want the IRS gone, and to do that, we want a different tax system; and this particular group preferred the sales tax system. This should be a top priority of the 105th Congress.

They also gave me an additional shirt, a little lady come up to me and said, would you please take this shirt to the gentleman from Ohio [Mr. TRAFICANT] for his hard work to get rid of the IRS? So I have to put up with the gentleman's popularity even in my own district.

ETHICS COMMITTEE SHOULD RELEASE INDEPENDENT COUNSEL'S REPORT

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, as I said yesterday, over a year ago, I pointed out that this House has a severe dark cloud hanging over it, all because of the inaction of the Committee on Standards of Official Conduct on complaints that have been filed against our Speaker, NEWT GINGRICH. They have been stalled and stalled and stalled. Now we have a report that has been filed by the independent counsel, and they are not releasing the report.

POINTS OF ORDER

Mr. LINDER. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). The gentleman will state it.

Mr. LINDER. Mr. Speaker, the gentleman has been here long enough to know the rules of the House. He shows it on the floor of the House all the time. He is abusing the rules of the House by referring to matters before the Committee on Standards of Official Conduct.

The SPEAKER pro tempore. The Chair sustains the point of order, and would permit the gentleman from Missouri [Mr. VOLKMER] to proceed in order.

Mr. VOLKMER. Mr. Speaker, one newspaper in Connecticut appropriately describes the chairperson of the Committee on Standards of Official Conduct as ''Stonewall Johnson.'' That is a perfect, appropriate description of the gentlewoman from Connecticut, and she has handled well the delay so that none of the ethics violations by the Speaker will ever be seen in the light of day.

POINT OF ORDER

Mr. LINDER. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state it.

Mr. LINDER. The gentleman is continuing to refer to matters before the Committee on Standards of Official Conduct.

The SPEAKER pro tempore. The Chair would sustain the point of order of the gentleman from Georgia [Mr. LINDER] and would remind Members that it is inappropriate to refer to the Members of the Committee on Standards of Official Conduct and their work.

TAX CUTS SHOULD REDUCE TAXES

(Mr. BAKER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAKER of California. Mr. Speaker, if a politician says that he wants to cut taxes, it would really help his case if the tax cuts would actually reduce the tax burden. President Clinton says he wants to cut taxes, but if you seriously look at his proposals, you will see not a tax cut, but voila, a tax increase.

A report released this week by the Joint Committee on Taxation shows that Bill Clinton's tax proposals will increase taxes $64 billion. Bill Clinton's bridge to the 21st century is evidently paved with the hard-earned tax dollars of the American family. Bill Clinton and the liberal Democrats have absolutely no intention of cutting taxes on any American family. Despite all the fancy terminology and all the sweet sounding words, Democrats remain the tax-and-spend liberals they have always been. Nothing has changed; they love big government. And the liberals claim that they want to cut your taxes in order to continue robbing the people of America to feather their nests here in Washington. This report proves it.

Shame on you liberal Democrats.

OUTSIDE COUNSEL'S REPORT PRIVILEGED RESOLUTION

(Mr. LEWIS of Georgia asked and was given permission to address the House

for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Georgia. Mr. Speaker, today or tomorrow the House will consider a privileged resolution I have introduced calling on the Ethics Committee to release the report of the outside counsel investigating Speaker NEWT GINGRICH. I would like to read the text of that privileged resolution:

Whereas on December 6, 1995, the Committee on Standards of Official Conduct agreed to appoint an outside counsel to conduct an independent, nonpartisan investigation of allegations of ethical misconduct by Speaker Newt Gingrich;

Whereas, after an eight-month investigation, that outside counsel has submitted an extensive document containing the results of his inquiry;

Whereas the report of the outside counsel cost the taxpayers $500,000;

Whereas the public has a right—and members of Congress have a responsibility—to examine the work of the outside counsel and reach an independent judgment concerning the merits of the charges against the Speaker;

Whereas these charges have been before the Ethics Committee for more than two years:

Whereas a failure of the Committee to release the outside counsel's report before the adjournment of the 104th Congress will seriously undermine the credibility of the Ethics Committee and the integrity of the House of Representatives;

Therefore be it resolved that—

The Committee on Standards of Official Conduct shall immediately release to the public the outside counsel's report on Speaker Newt Gingrich, including any conclusions, recommendations, attachments, exhibits or accompanying material.

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT MUST COMPLETE ITS WORK

(Mr. GUNDERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Speaker, the gentleman from Georgia [Mr. LEWIS], the gentleman from California [Mr. FAZIO] earlier, are absolutely correct. I would like to join my colleagues on the other side of the aisle in publicly stating that the American people and this Congress have not only the right, but we as representatives of those people have the responsibility to see the Committee on Standards of Official Conduct complete its process, when it is complete. I repeat, when it is complete.

The Committee on Standards of Official Conduct, chaired by the gentlewoman from Connecticut [Mrs. JOHNSON], our colleague, has conducted this investigation in accordance with the rules established by this House.

When the committee has completed its responsibilities, I am confident that the report will be made public and then the American people and the House of Representatives will have the opportunity and the responsibility to respond to those conclusions.

Until such time, I would call on my colleagues on both sides of the aisle to let the rules of the House and the Committee on Standards of Official Conduct complete its task and its responsibility. I believe that will be done properly.

HOW LONG DOES IT TAKE FOR A REASONABLE INVESTIGATION?

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I listen to my words of my friend, the gentleman from Wisconsin [Mr. GUNDERSON], and I would agree with him that clearly we do not want any half-baked anything here. But as I get ready to leave this body, I am beginning to think about what I could will to the Committee on Standards of Official Conduct, and I am thinking about willing them an outbox. I guess the question is, how long does it take for a reasonable investigation? Our problem is 2 years seems like a very long time.

In the past, and we can bring those charts to the floor except they probably would be ruled out of order, but we have charts showing that all sorts of serious complaints before were dealt with in a matter of weeks or months, and sometimes days. But 2 years, 2 long years? And there is some suspicion that we may not see this until after the term is over and that people will then think, oh, well, it is moot now and we start all over again.

I think, if that happens, this body will really be operating under a very dark cloud.

''DEAR COLLEAGUE'' LETTER FROM THE PAST APPLIES TO PRESENT ETHICS COMMITTEE SITUATION

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, three of the previous speakers, the gentlewoman from Colorado [Mrs. SCHROEDER], the gentleman from Georgia [Mr. LEWIS], and the gentleman from Missouri [Mr. VOLKMER], were all signatories to a letter that goes directly to this point that they are now arguing the other side of with respect to disclosure from the Committee on Standards of Official Conduct. It was written just a few short years ago.

Mr. Speaker, it says:

As the Ethics Committee prepares its recommendations to the full House, it should only release the information which the Committee agrees is relevant and necessary to support its findings.

Why is that? Because, it goes on,

to ask a Member, any Member, to also respond in the court of public opinion to allegations, rumors and innuendo not deemed worthy of charge by the Committee would be totally unfair and a perversion of the process. Especially in a time of press sensationalism.

Public release of material not germane to formal Committee action

In the Wright case,

would be similar to the process used during the Joe McCarthy era: Ignore the discipline of the process and firm evidence and dump unproven allegations out in public and let the ensuing publicity destroy the person's reputation and character.

THERE IS A DIFFERENCE BETWEEN DEMOCRATS AND REPUBLICANS

(Mr. WYNN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield for just one second?

Mr. WYNN. I am delighted to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Speaker, I just wanted to respond that in the Wright case it took 2 weeks to get a special counsel, and in the Gingrich case we talked about 15 months. I think there is a great difference. Thank you.

Mr. WYNN. Mr. Speaker, people often wonder: Is there a difference between Democrats and Republicans? There absolutely is. That difference is being played out in the closing weeks of this year's session.

Mr. Speaker, the Democrats are trying to get more money for education, about $3.1 billion for education and job training. No, it will not unbalance the budget. The budget will be fine. But it will enable us to provide funds for basic math and reading skills. Head Start, summer jobs for kids, dislocated worker assistance, school-to-work initiatives, and Pell grants for college students.

Mr. Speaker, we hear a lot of rhetoric about our children's future. The Democrats care about our children's future. That is why we are fighting for education. The American people want more Federal support for education. Strapped local and State governments want more money for education.

We have an opportunity in the closing weeks of this session to provide that assistance without affecting the budget. We ought to do it.

Mr. Speaker, there is a difference between the Democrats and Republicans: Democrats favor aid to education.

THE CLINTON ADMINISTRATION RETREATS

(Mr. MILLER of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of Florida. Mr. Speaker, after a decade of progress under Ronald Reagan and George Bush, Bill Clinton is leading the full-scale retreat on the war on drugs.

Upon arriving in the White House, Bill Clinton began by dismantling the war on drugs. He began by slashing the U.S. military's drug interdiction budget by 1,000 positions. In February 1993,

he eliminated 83 percent of the staff at the Office of National Drug Policy. That is where the drug czar works.

Bill Clinton cut Customs Service interdiction by 20 percent. And to top it off, in December 1993, the Clinton-appointed Surgeon General, Jocelyn Elders, publicly talked about drug legalization.

Mr. Speaker, is it any surprise that under Bill Clinton's watch the number of 12- to 17-year-olds using marijuana has doubled? And marijuana use today starts at a younger age. The average age of first use is about 13½ years.

The children of today are coming under the era of the President who said, I didn't inhale. And now it is our communities that are feeling the pain.

SELECT COMMITTEE NEEDED TO INVESTIGATE CIA/CRACK CONNECTIONS

(Ms. WATERS asked and was given permission to address the House for 1 minute.)

Ms. WATERS. Mr. Speaker, I demand that this House investigate recent reports of CIA-organized military efforts which led to the introduction of crack cocaine into south central Los Angeles and other inner city areas.

The San Jose Mercury News, in a recent series of newspaper articles, has documented the involvement of CIA operatives in the earliest trafficking of crack cocaine into this country.

Crack cocaine has ravaged our communities with despair, violence, addiction, and death. In what appears to be an overzealous attempt to raise money for the Nicaraguan Contras in the early 1980's, it is alleged that the CIA-run Contras used profits, profits made from selling drugs in the United States, to fund their movement.

Mr. Speaker, these charges are so severe that they require immediate congressional action. Today, I call on this House to pass legislation I have introduced enabling an Iran-Contra-type select committee to get to the bottom of the allegations that have been made.

We cannot wait to consider this matter, Mr. Speaker. Too much time has been lost already.

□ 1030

ENGLISH AS THE OFFICIAL LANGUAGE

(Mr. ROTH asked and was given permission to address the House for 1 minute.)

Mr. ROTH. Mr. Speaker, as this session draws to a close there is much unfinished business, very important business that we must address. One such piece of legislation that we have addressed in this House, thankfully, is the English language bill.

I have spoken to the leadership in the other body, and I hope that they will bring that bill up for a vote before the end of the session. Many Members have and I have personally spent years, countless months, weeks, days, and hours on this effort.

I am thankful that again we in this House had the good sense to pass this bill, as the American people have so often requested in every single poll taken in America. Now we must see to it that we carry this bold action for America through to its cherished end. I am asking the Members of this House to help me in that effort.

LET THE PEOPLE BE HEARD

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise this morning to speak on a very serious issue, and I truly believe that this should not be an issue, a cause of partisan stridency. But a friend of mine, Speaker Jim Wright, some years ago faced this House in a dignified manner. Interestingly enough, the report on Speaker Wright, an outstanding man, dealing with an ethics allegation, was issued and reported to this body in 14 days. Speaker Wright was a Democrat and a great American.

It seems to me quite contradictory and hypocritical that we now have a preliminary ethics report on the Speaker of the House and the American people cannot hear it. I do not need to rise to the floor of the House shouting at the top of my lungs. I only need to ask the question.

If there is a report of ethics violations on the Speaker of the House of the United States of America, let the people be heard and let the people hear the report. This report should be issued so that all of us can discuss it, understand it and respond to it. Release the special counsel's report now on behalf of the American people.

ANNOUNCEMENT OF INTENTION TO OFFER RESOLUTION RAISING QUESTIONS OF PRIVILEGES OF THE HOUSE

Mr. LINDER. Pursuant to clause 2, rule IX, I hereby give notice of my intention to offer a question of privileges of the House resolution.

I will read the contents of the resolution:

Whereas, a complaint filed against Rep. Gephardt alleges House Rules have been violated by Rep. Gephardt's concealment of profits gained through a complex series of real estate tax exchanges and;

Whereas, the complaint also alleges possible violations of banking disclosure and campaign finance laws or regulations and;

Whereas, the Committee on Standards of Official Conduct has in complex matters involving complaints hired outside counsel with expertise in tax laws and regulations and;

Whereas, the Committee on Standards of Office Conduct is responsible for determining whether Rep. Gephardt's financial transactions violated standards of conduct or specific rules of House of Representatives and;

Whereas, the complaint against Rep. Gephardt has been languishing before the committee for more than seven months and the integrity of the ethics process and the manner in which Members are disciplined is called into question; now, be it

Resolved, That the Committee on Standards of Official Conduct is authorized and directed to hire a special counsel to assist in the investigation of this matter.

Resolved, That all relevant materials presented to, or developed by, the committee to date on the complaint be submitted to a special counsel, for review and recommendation to determine whether the committee should proceed to a preliminary inquiry.

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). Under rule IX, a resolution offered from the floor by a Member other than the majority leader or the minority leader as a question of the privileges of the House has immediate precedence only at a time or place designated by the Chair in the legislative schedule within 2 legislative days. The Chair will announce that designation at a later time.

A determination as to whether the resolution constitutes a question of privilege will be made at that later time.

APPOINTMENT OF CONFEREES ON H.R. 2977, ADMINISTRATIVE DISPUTE RESOLUTION ACT OF 1996

Mr. HYDE. Mr. Speaker, pursuant to clause 1 of rule XX and by direction of the Committee on the Judiciary, I move to take from the Speaker's table the bill (H.R. 2977) to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. HYDE] is recognized for 1 hour.

Mr. HYDE. Mr. Speaker, this is the customary request which will enable us to go to conference on this bill.

I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois [Mr. HYDE].

The motion was agreed to.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. HYDE, GEKAS, FLANAGAN, CONYERS, and REED.

There was no objection.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the pending business is the question of the Speaker's approval of the Journal.

The question is on the Speaker's approval of the Journal of the last day's proceedings.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CANADY of Florida. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 339, nays 58, answered ''present'' 1, not voting 35, as follows:

[Roll No. 420]

YEAS—339

Ackerman	Deutsch	Kelly
Allard	Diaz-Balart	Kennedy (MA)
Andrews	Dixon	Kennedy (RI)
Archer	Doggett	Kennelly
Armey	Dooley	Kildee
Bachus	Doolittle	Kim
Baesler	Doyle	King
Baker (CA)	Dreier	Kingston
Baker (LA)	Duncan	Kleczka
Baldacci	Dunn	Klink
Ballenger	Durbin	Klug
Barcia	Edwards	Knollenberg
Barr	Ehlers	Kolbe
Barrett (NE)	Ehrlich	LaHood
Barrett (WI)	Engel	Lantos
Bartlett	Eshoo	Largent
Barton	Evans	Laughlin
Bass	Ewing	Lazio
Bateman	Farr	Leach
Becerra	Fattah	Lightfoot
Bereuter	Fawell	Lincoln
Berman	Foglietta	Linder
Bevill	Foley	Livingston
Bilbray	Forbes	LoBiondo
Bilirakis	Ford	Lofgren
Bishop	Fowler	Lowey
Bliley	Frank (MA)	Lucas
Blumenauer	Franks (CT)	Luther
Blute	Franks (NJ)	Maloney
Boehlert	Frelinghuysen	Manton
Boehner	Frisa	Manzullo
Bonilla	Frost	Martinez
Boucher	Gallegly	Martini
Brewster	Gejdenson	Mascara
Browder	Gekas	Matsui
Brown (FL)	Geren	McCarthy
Brown (OH)	Gilchrest	McCollum
Brownback	Gilman	McCrery
Bryant (TN)	Gonzalez	McDade
Bryant (TX)	Goodlatte	McHale
Bunning	Goodling	McHugh
Burr	Gordon	McInnis
Burton	Goss	McIntosh
Buyer	Graham	McKeon
Callahan	Greene (UT)	McKinney
Calvert	Greenwood	Meehan
Camp	Gunderson	Meek
Campbell	Gutierrez	Metcalf
Canady	Hall (OH)	Meyers
Cardin	Hall (TX)	Mica
Castle	Hamilton	Millender-McDonald
Chabot	Hancock	Miller (FL)
Chambliss	Hansen	Minge
Chenoweth	Hastert	Mink
Christensen	Hastings (WA)	Moakley
Chrysler	Hayworth	Molinari
Clement	Hefner	Mollohan
Clinger	Herger	Montgomery
Coble	Hobson	Moorhead
Coburn	Hoekstra	Moran
Coleman	Hoke	Morella
Collins (GA)	Holden	Murtha
Combest	Horn	Myers
Condit	Hostettler	Myrick
Costello	Houghton	Nadler
Cox	Hoyer	Neal
Coyne	Hunter	Nethercutt
Cramer	Hyde	Neumann
Crapo	Inglis	Ney
Cremeans	Istook	Norwood
Cubin	Jackson (IL)	Nussle
Cummings	Jackson-Lee (TX)	Oberstar
Cunningham	Jefferson	Obey
Danner	Johnson (CT)	Olver
Davis	Johnson (SD)	Ortiz
Deal	Johnson, Sam	Orton
DeLauro	Kanjorski	Owens
DeLay	Kaptur	Oxley
Dellums	Kasich	Packard
Deutsch	Kelly	Pallone
Diaz-Balart	Kennedy (MA)	Parker
Dixon	Kennedy (RI)	Pastor
Doggett	Kennelly	Paxon
Dooley	Kildee	Payne (NJ)
Doolittle	Kim	Payne (VA)
Doyle	King	Pelosi
Dreier	Kingston	Peterson (MN)
Duncan	Kleczka	Petri
Dunn	Klink	Pomeroy
Durbin	Klug	Porter
Edwards	Knollenberg	Portman
Ehlers	Kolbe	Pryce
Ehrlich	LaHood	Quillen
Engel	Lantos	Quinn
Eshoo	Largent	Radanovich
Evans	Laughlin	Rahall
Ewing	Lazio	Rangel
Farr	Leach	Reed
Fattah	Lightfoot	Regula
Fawell	Lincoln	Riggs
Foglietta	Linder	Rivers
Foley	Livingston	Roberts
Forbes	LoBiondo	Roemer
Ford	Lofgren	Rogers
Fowler	Lowey	Rohrabacher
Frank (MA)	Lucas	Ros-Lehtinen
Franks (CT)	Luther	Rose
Franks (NJ)	Maloney	Roth
Frelinghuysen	Manton	Roukema
Frisa	Manzullo	Roybal-Allard
Frost	Martinez	Royce
Gallegly	Martini	Salmon
Gejdenson	Mascara	Sanders
Gekas	Matsui	Sanford
Geren	McCarthy	Sawyer
Gilchrest	McCollum	Saxton
Gilman	McCrery	Scarborough
Gonzalez	McDade	Schaefer
Goodlatte	McHale	Schiff
Goodling	McHugh	Schumer
Gordon	McInnis	Scott
Goss	McIntosh	Seastrand
Graham	McKeon	Sensenbrenner
Greene (UT)	McKinney	Serrano
Greenwood	Meehan	Shadegg
Gunderson	Meek	Shaw
Gutierrez	Metcalf	Shays
Hall (OH)	Meyers	Shuster
Hall (TX)	Mica	Sisisky
Hamilton	Millender-McDonald	Skaggs
Hancock	Miller (FL)	Skeen
Hansen	Minge	Skelton
Hastert	Mink	Slaughter
Hastings (WA)	Moakley	Smith (MI)
Hayworth	Molinari	Smith (NJ)
Hefner	Mollohan	Smith (TX)
Herger	Montgomery	Smith (WA)
Hobson	Moorhead	Solomon
Hoekstra	Moran	Souder
Hoke	Morella	Spence
Holden	Murtha	Spratt
Horn	Myers	Stearns
Hostettler	Myrick	Stenholm
Houghton	Nadler	Stokes
Hoyer	Neal	Studds
Hunter	Nethercutt	Talent
Hyde	Neumann	Tanner
Inglis	Ney	Tate
Istook	Norwood	Tauzin
Jackson (IL)	Nussle	Taylor (NC)
Jackson-Lee (TX)	Oberstar	Tejeda
Jefferson	Obey	Thomas
Johnson (CT)	Olver	Thornberry
Johnson (SD)	Ortiz	Thurman
Johnson, Sam	Orton	Tiahrt
Kanjorski	Owens	Torres
Kaptur	Oxley	Torricelli
Towns	Traficant	Upton
Velazquez	Vucanovich	Walker
Walsh	Wamp	Ward
Waters	Watt (NC)	Waxman
Weldon (FL)	Weldon (PA)	White
Whitfield	Wicker	Wise
Wolf	Woolsey	Wynn
Yates	Young (AK)	Young (FL)
Zeliff		

NAYS—58

Abercrombie	Gephardt	Pickett
Bonior	Gibbons	Pombo
Borski	Gillmor	Poshard
Brown (CA)	Green (TX)	Ramstad
Bunn	Gutknecht	Rush
Clay	Hefley	Sabo
Clyburn	Hilleary	Schroeder
Collins (IL)	Hilliard	Stockman
Collins (MI)	Hinchey	Stupak
Cooley	Hutchinson	Taylor (MS)
Crane	Jacobs	Thompson
Dingell	Johnson, E. B.	Torkildsen
English	Jones	Vento
Ensign	Latham	Visclosky
Everett	Levin	Volkmer
Fazio	Lewis (GA)	Watts (OK)
Flake	Lewis (KY)	Weller
Flanagan	Lipinski	Zimmer
Fox	Markey	
Funderburk	Miller (CA)	

ANSWERED ''PRESENT''—1

Harman

NOT VOTING—35

Beilenson	Fields (TX)	Longley
Bentsen	Filner	McDermott
Bono	Furse	McNulty
Chapman	Ganske	Menendez
Clayton	Hastings (FL)	Peterson (FL)
Conyers	Hayes	Richardson
de la Garza	Heineman	Stark
DeFazio	Johnston	Stump
Dickey	Kasich	Thornton
Dicks	LaFalce	Williams
Dornan	LaTourette	Wilson
Fields (LA)	Lewis (CA)	

☐ 1054

Mr. HINCHEY changed his vote from ''nay'' to ''yea.''

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

DISCHARGING THE COMMITTEE ON THE JUDICIARY FROM FURTHER CONSIDERATION OF THE PRESIDENT'S VETO OF H.R. 1833, PARTIAL-BIRTH ABORTION BAN ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore (Mr. LAHOOD). The clerk will report the motion.

The clerk read as follows:

Mr. CANADY of Florida moves to discharge the Committee on the Judiciary from the further consideration of the President's veto of the bill, H.R. 1833.

The SPEAKER pro tempore. The gentleman from Florida [Mr. CANADY] is recognized for 1 hour.

☐ 1100

Mr. CANADY of Florida. Mr. Speaker, I yield the customary 30 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER], pending which I yield myself such time as I may consume.

(Mr. CANADY of Florida asked and was given permission to revise and extend his remarks.)

Mr. CANADY of Florida. Mr. Speaker, on April 15 this year President Bill Clinton vetoed H.R. 1833, the Partial Birth Abortion Ban Act.

As a result, the President is the one person standing in the way of Congress saving thousands of children from being partially delivered and then killed with an abortion procedure that has shocked the conscience of the American people.

The drawings here describe the procedure called partial-birth abortion. These drawings describe this horrible procedure step by step. Mr. Speaker, in the partial-birth abortion procedure, the physician or the abortionist begins in this way. Guided by ultrasound, he grabs the live baby's leg with forceps. Then the abortionist pulls the baby's leg out into the birth canal. The abortionist delivers the living baby's entire body except for the head, which is deliberately kept lodged just within the uterus, as is depicted in this drawing.

Then the abortionist jams scissors into the baby's skull. The scissors are opened to enlarge the hole. This is the step in this procedure which kills a living human child.

Next, in completing this horrible procedure, the abortionist removes the scissors and inserts a suction catheter into the baby's skull. The child's brains are removed, causing the skull to collapse, and the delivery of a dead child is completed. This tells the truth about partial-birth abortion. This is the truth that the proponents of partial-birth abortion have tried to conceal from the very day that the debate over this bill began. These are the drawings that the supporters of partial-birth abortion tried to censor and tried to prevent this House from even seeing and tried to prevent the American people from even seeing, but this is the truth that cannot be concealed.

After the President vetoed this bill, which was passed with strong bipartisan support here in this House and in

the Senate, Senator DANIEL PATRICK MOYNIHAN of New York said, and I quote, ''I think this is just too close to infanticide. A child has been born and it has exited the uterus, and what on earth is this procedure?''

Senator MOYNIHAN is right. The only difference between the partial-birth abortion procedure and homicide is a mere 3 inches. President Clinton and the abortion lobby have tried to defend this indefensible procedure by propagating a number of myths to mislead the press and the public.

Supporters of partial-birth abortion have repeatedly denied or misrepresented the facts about partial-birth abortion. But the truth cries out against them. Despite their relentless effort to misrepresent and confuse the issue, the evidence continues to mount against this horrible practice. Both the National Abortion Federation and the National Abortion Rights Action League claim that anesthesia administered to the mother before a partial-birth abortion is performed kills the child, and therefore the child feels no pain when those scissors are being inserted into the child's head. Norig Ellison, the President of the American Society of Anesthesiologists, unequivocally stated that those claims had absolutely no basis in scientific fact.

Dr. David Birnbach, the President-elect of the Society for Obstetric Anesthesia and Perinatology, said the claims were crazy, but despite these and other authoritative statements to the contrary, the abortion lobby continued to assert the falsehood concerning anesthesia.

Dr. Ellison said that he was deeply concerned that widespread publicity may cause pregnant women to delay necessary and perhaps life-saving medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus.

Consequently, I held a hearing in the Subcommittee on the Constitution to put to rest the anesthesia myth. The facts were clear: Anesthesia administered to the mother during a partial-birth abortion does not kill the child, nor does the anesthesia alleviate the child's pain. Dr. Jean Wright, a professor of pediatrics and anesthesia at the Emory University School of Medicine in Atlanta, concluded that the partial-birth abortion procedure, if it were done on an animal in my institution, would not make it through the institutional review process. The animal would be more protected than this child is.

The National Abortion Federation, a lobbying group that represents abortion providers, also claims that partial-birth abortion was inconsequential because only 500 children per year were being aborted using the method. This myth exploded when the Record, a daily newspaper published in northern New Jersey, documented that doctors at a single abortion clinic in Englewood, NJ, performed 1,500 partial-birth abortions per year on women who are 20 to 24 weeks pregnant. That is three times the number the abortion lobby claims nationwide.

The paper also reported that the New Jersey doctors say only a minuscule amount are for medical reasons. That is very interesting that the National Abortion Federation, which represents abortion providers, did not know about this. The people who are doing this are represented by that organization. Yet they claim such a small number of these procedures were being performed. It simply was not true. I would suggest it is very likely they knew it was not true.

The admission of these New Jersey doctors that only a minuscule amount of the 1,500 partial-birth abortions they perform every year are for medical reasons brings me to the most pervasive myth promulgated by the abortion lobby. The abortion lobby claims that partial-birth abortion is only used in cases where a mother needs the procedure to spare her health or future fertility. President Clinton used this claim when he vetoed the Partial Birth Abortion Ban Act, asserting that the procedure is necessary for women's health.

Unfortunately, for the most part this claim has been reported uncritically, although the evidence is overwhelmingly against it. Former Surgeon General C. Everett Koop insists that the President is misinformed about partial-birth abortion. Dr. Koop explains:

> In no way can I twist my mind to see that the late-term abortion as described, partial-birth, and then destruction of the unborn child before the head is born, is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I'm opposed to partial-birth abortions.

Dr. Martin Haskell, who has performed over 1,000 partial-birth abortions, wrote that he routinely performs this procedure on all patients 20 through 24 weeks; that is, 4½ to 5½ months into pregnancy. Haskell told the American Medical News.

> I will be quite frank: Most of my abortions are elective in that 20- to 24-week range. In my particular case, probably 20 percent are for genetic reasons. And the other 80 percent are purely elective.

Another abortionist, Dr. James McMahon, who performed partial-birth abortions in the third trimester on five women who appeared with President Clinton at his April 15 veto event, submitted to Congress a detailed breakdown of a series of over 2,000 partial-birth abortions. He classified only 9 percent as involving maternal health indications, of which the most common was depression. Other health reasons included spousal drug exposure and the youth of the mother. That is what they are talking about when they talk about health.

Another 56 percent of these abortions were for fetal flaws, but these included a great many nonlethal disorders such as cleft lip and Down's syndrome.

Most strikingly, Dr. McMahon did not list reasons, not even depression or cleft lip, for more than one-third of the partial-birth abortions he performed. McMahon candidly admitted that he used the procedure for elective abortions, explaining ''after 20 weeks, where it frankly is a child to me, I really agonize over it,'' but he added, ''Who owns the child? Who owns the child? It's got to be the mother.'' Property can be disposed of in such a heinous manner.

Just this week the Washington Post described the real circumstances behind most partial-birth abortions. Dr. David Brown, a staff writer, wrote:

> The typical patients tend to be young, low-income women, often poorly-educated or naive, whose reasons for waiting so long to end their pregnancies are rarely medical.

Clearly, most partial-birth abortions are performed on the healthy children of healthy mothers. But let me address the small percentage of partial-birth abortions that are performed on children with conditions that may be incompatible with life outside the womb. The President of the United States used his bully pulpit to tell women throughout the country that the gruesome partial-birth abortion procedure must remain available because the only alternative is to allow doctors to ''* * * rip your bodies to shreds, and you could never have another baby even though the baby you were carrying couldn't live.''

In response to this statement, this outrageous statement, Dr. Nancy Romer, a practicing high-risk obstetrician-gynecologist who is also a professor of medicine, said, this is totally untrue. There is no basis in fact for what the President has claimed. There is no scientific evidence, there is no medical evidence, to support that.

The President has relied on a campaign of misinformation. The supporters of partial-birth abortion have relied on a campaign of misinformation. But it is time that we put a stop to the misinformation about partial-birth abortion.

We have had women who have come forward who have had similar circumstances to the women who were there at the White House at the veto ceremony. They went forward with their pregnancies. They delivered the babies without the use of this procedure, and there was no harm done to them. They have stood and given witness to that fact.

These brave women took it upon themselves to request that the President give them the same opportunity to meet with him that he extended to families who have had partial-birth abortions. On behalf of the women, Mrs. Jeannie French wrote to the President.

> Perhaps inadvertently, you sent a message of hopelessness to women and families who anticipate the birth of children with serious or fatal disabilities. This message is so wrong.

Unfortunately, the President flatly refused to meet with them.

When asked about vetoing the Partial-Birth Abortion Ban Act, Bill Clinton said:

The President is the only place in this system of ours where there is one person who can stand up for the people with no voice, no power, who are going to be eviscerated.

Eviscerate has a medical meaning; that is, to remove the contents of a body organ.

Mr. Speaker, partially born children are being eviscerated. You can see it right here. Instead of standing up for these tiny, defenseless people, Bill Clinton stood in their way and stands in their way. I urge my colleagues to take this opportunity today to stand up for children with no voice, no power; children who are going to be eviscerated in the future unless we pass this bill over the President's veto.

Vote yes on the motion to discharge, and then vote yes to override President Clinton's veto of the Partial-Birth Abortion Ban Act. Let us put a stop to this horrendous procedure. Let us stop partial-birth abortion in America.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER (Mr. LAHOOD). The Chair will remind all persons in the gallery that they are guests of the House, and that any manifestation of approval or disapproval of proceedings is a violation of the House rules.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Massachusetts [Mr. FRANK], chairman of the subcommittee.

□ 1115

Mr. FRANK of Massachusetts. It is the chairman in exile, Mr. Speaker.

The gentleman who just spoke acknowledged that there are cases where there are health reasons. He said they are a small number. This bill is controversial for one reason and one reason only. The majority absolutely, in both branches, refused to allow an amendment that would have provided an exception where the health of the mother was at stake. In the other body, such an amendment was put forward and it was defeated. In this House, we went to the Committee on Rules and asked for the right to present it, and we were not allowed to do it.

If the majority feels that the health-generated abortions of this sort are such a minuscule portion of the total, why have they adamantly refused to allow us to vote on such an amendment? We are talking here when we talk about health, about cases where the child to be born is unfortunately so severely deformed as to have no chance of life whatsoever, and the question is, if a doctor decides late in a pregnancy when this is dicovered that the child will not survive if born and that this is the method of abortion that minimizes risk to the mother, this bill makes that a crime. We were not even allowed to vote on that.

Members have said that on the other side, ''Well, if you just say health, it will be too vague.'' Well, they have got the votes. They could have defined health. They could have said physical health. They could have said significant physical health.

Understand that this bill would outlaw, as it is presented to us, and this is what the President justifiably discussed when he vetoed it, this would outlaw the doctor deciding in his or her judgment what is the best procedure for a fetus that has no chance of life outside the mother and the doctor says this is the safest way.

We have had people who have said, ''Look, the doctor said to me if I didn't use this procedure, my ability to have children in the future would have been wiped out.''

This bill says no. If in fact they believe that medical-generated cases are a small number, why did they not allow us to vote on this? The reason is, this is part of an effort by people who conscientiously believe that all abortion is wrong. The people pushing for this bill do not really differentiate in their own minds, morally, philosophically, any other way, between this particular form of abortion and any other form performed in the second or third month. They do not like the whole notion. No one does. It is not a pleasant thing to describe in any form. But the question is, if a doctor says to a woman in her sixth or seventh month, ''Look, we have sad news, the child you will give birth to will have no chance whatsoever of life and in fact if you give birth in the normal fashion, this could damage your health, and I want to use this procedure''; the doctor says, ''I advise that we follow this procedure, because in my medical judgment any other action would threaten your health,'' that doctor has just proposed the commission of a crime.

Send this back to conference, give us an amendment that says significant physical health effects would be a reason to allow this, and you would not have a controversy because the President would have signed the bill.

So that is the whole story. This bill refuses to allow a doctor and the pregnant woman to decide that in the case of a fetus that has no chance to live this is the best procedure and you would make that a crime.

Mr. CANADY of Florida. Mr. Speaker, I yield 2½ minutes to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Speaker, we are talking today about a procedure that is defined as the following: ''Partially delivers a living fetus before killing the fetus and completing the delivery.'' And we are talking about doing this with a pair of scissors inserted into the back of this baby's skull.

Now, let me gently try to contrast that image that you have right now with one that is given in a very popular book today on the bestseller list, ''What To Expect When You're Expecting,'' when people are ready for the joy of a new birth in their family. In the fifth and the sixth month when many of these gruesome procedures are performed, here is what is happening to this baby:

By the end of the sixth month, the fetus is about 13 inches long and weighs about a pound and a quarter. Its skin is thin and shiny with no underlying fat. Its finger and toe prints are visible. Eyelids begin to part. The eyes are opening. With intensive care, the fetus may survive now outside the womb.

So we are now contrasting a procedure that is brutal and gruesome and abominable with what we could put into care and technology and love and commitment to have that baby survive.

Let me say, Mr. Speaker, that in this body we spend billions of dollars on satellites in space that can pick up a license plate on Earth. We spend billions on defense, for F–117's to deliver cruise missiles. Can we not find a measure to ban these procedures?

Mr. Speaker, pro-life, pro-choice people, this is not a question of one's philosophy. We all agree abortion should be rare. This procedure should be banned. Let us vote today in a bipartisan way to save our children, to be bipartisan, and to permanently ban the procedure that takes these precious lives that might and could be saved.

Mrs. SCHROEDER. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Texas [Ms. JACKSON-LEE], a distinguished member of the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, with great emotion I rise this morning really to speak to the American people, for giving birth, as I have done, is not a pretty picture. But, oh, what a wonderful sight when that bouncing and wonderfully larger than life human being comes into your arms.

So as a member of the House Committee on the Judiciary, it was with great trepidation and tears and emotion that I listened to women come and not talk about death but talk about life, the kind of life that you see in these families.

I am pained now to be on the floor of the House because Republicans have made a medical procedure now a political cause. I am pained because I personally know the pain of praying for a fetus to survive and it did not. I am glad I had the support of my God, my doctor, and my family. I believe Americans are praying people, who believe in the right to privacy in this most difficult and private matter.

This is a medical procedure that is only done to save the life of the mother and to give a family the opportunity to bear children again. Note that I say a family, for this is a significant decision that must be made with the significant partner, the husband, the wife, the family, and, yes, the physician and their spiritual leader and their God.

Listening to the testimony about a woman who had a child that could not be viable, the doctors told this woman

who testified that there was no hope, she asked about utero surgery, about shunts to remove the fluid that was on the brain. Nothing would work. There was pain. And the only thing that could work would be this procedure.

In trying to seek some relief, this particular woman who testified at the Judiciary Committee went to several specialists, looking for an opportunity to preserve life. I ask for mercy today that we would be allowed to go back to committee to address the question of life.

Birth is not pretty, but we want it to occur. This procedure is not pretty, and it should not be on the floor of the House, but God help us that we not take this time to deny American women and families the opportunity for life. Sustain the President. Allow us to fix it to provide life for Americans.

Mr. CANADY of Florida. Mr. Speaker, I would inquire of the Chair concerning the amount of time remaining on both sides.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Florida [Mr. CANADY] has 13½ minutes remaining and the gentlewoman from Colorado [Mrs. SCHROEDER] has 24 minutes remaining.

Mr. CANADY of Florida. Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida [Mr. DEUTSCH].

Mr. DEUTSCH. Mr. Speaker, I would like to speak in the short time that I have for the people who are not in this Chamber today, who cannot speak for themselves but have spoken in other settings.

This is a picture of Coreen Costello and her family. I am going to quote from a letter that she has written. If anyone wants it, they can ask their Member of Congress for the complete letter.

Those who want to ban a controversial late-term abortion technique might think I would be an ally. I was raised in a conservative, religious family. My parents are Rush Limbaugh fans. I'm a Republican who always believed that abortion was wrong.

Then I had one.

Disaster struck in my seventh month. Ultrasound testing showed that something was terribly wrong with my baby. Because of a lethal neuromuscular disease, her body had stiffened up inside my uterus.

Our doctors told us that Katherine Grace could not survive, and that her condition made giving birth dangerous for me—possibly even life threatening. Because she could not absorb amniotic fluid, it had gathered in my uterus to such dangerous levels that I weighed as much as if I were at full term.

At first I wanted the doctors to induce labor, but they told me that Katherine was wedged so tightly in my pelvis that there was a good chance my uterus would rupture. We talked about a caesarean section. But they said this, too, would have been too dangerous for me.

Finally we confronted the painful reality: Our only real option was to terminate the pregnancy.

She goes on to mention that ''I'm pregnant again and due in June.''

There are health issues that this procedure protects that would be banned and made criminal by this bill. That is a fact. The gentleman from Florida [Mr. CANADY] might want to ignore that, but it is a fact. I do not think there is any person that would want this.

The gentleman from Florida [Mr. CANADY], our colleague, we have got great news that he is engaged now, just got engaged, I guess, recently. Hopefully he is going to have children. I have a daughter who is 4 years old. Some day hopefully she will have children.

I pray that no one would ever have to face the choice that some of these women faced, but in the real world people will have those choices and they will have to make that choice of their own health or not, as to the best procedure that is available. I just do not think that it is the right thing for the U.S. Congress to do, to tell Mrs. Costello or other women that they should put their lives at risk in this type of situation.

Mrs. SCHROEDER. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. I thank the gentlewoman from Colorado for her leadership and for yielding me this time.

Mr. Speaker, I rise in opposition to this legislation and to the veto override of H.R. 1833. I believe it is unconstitutional and interferes directly with the practice of medicine. It is an unwarranted and unneeded government intrusion into medicine and into the family. The bill destroys the family's right to face a devastating circumstance with safety and dignity. But don't listen to me. I think that nothing speaks more eloquently to this issue than the voice of some of the families who have been through these very, very sad circumstances.

□ 1130

Many women who have undergone this procedure have bravely shared their stories with Members of Congress and the country, because of their great fear that other women facing tragic circumstances late in pregnancy will not have access to the safest possible procedures.

One such women is Vikki Stella, whose beautiful family is shown here. Vikki writes that her husband Archer and she live in Illinois, in a western suburb of Chicago. They have three children, Lindsay, Natalie, and Nicholas.

A little less than 2 years ago Vikki had a procedure that this legislation would ban. She was in the third trimester of pregnancy for a much-wanted son. She was diabetic and therefore her health was of particular concern. During the pregnancy she had to inject herself many times a day with insulin, et cetera.

She had prenatal tests showing her pregnancy was normal, but at 32 weeks she says her world was turned upside down. She went in for another ultrasound which found grave problems that had not been detected before. ''Ultimately,'' she said, ''my son was diagnosed with at least nine major anomalies that included a fluid-filled cranium with no brain tissue at all.''

Vikki said never in the lives of her family would they have imagined a disaster like this could happen to them. Their options were extremely limited because of her diabetic situation. A C-section or a normal labor were not options available to her without having potentially severe health consequences.

The best option was a highly specialized surgical abortion procedure developed for women with similar difficult conditions, called an intact D&E. ''This procedure was gentle,'' says Vikki. ''Our baby was delivered intact. We held him in our arms and said our goodbyes. We named him Anthony.''

Losing Anthony was a great tragedy for her, which she so generously, the Stella family has so generously shared with this Congress so that other women will have the best possible options available to them.

Mr. Speaker, I include for the RECORD the letter from Vikki Stella referred to above:

JULY 29, 1996.

Member of Congress,
U.S. House of Representatives,
Washington, DC.

DEAR MEMBER OF CONGRESS: My name is Vikki Stella. My husband Archer and I live in Naperville, Illinois, in the western suburbs of Chicago. We have three children, Lindsay, who is twelve; Natalie, who is seven; and Nicholas Archer, who is seven months old. I am one of the women who stood with President Clinton as he vetoed H.R. 1833, the so-called ''Partial Birth Abortion'' Ban Act.

A little less than two years ago I had a procedure that the legislation would ban. I was in my third trimester of pregnancy with a much-wanted son. I am diabetic and, therefore, my health is of particular concern. During the pregnancy, I injected myself twice a day with insulin and checked my blood sugars eight times a day by pricking my finger and using a glucose meter. I had more prenatal tests than most women including an amniocentesis and five ultrasounds. Our doctor had pronounced my pregnancy ''disgustingly normal.'' But then at 32 weeks, our world turned upside-down. I went in for another ultrasound, which found grave problems that had not been detected before. Ultimately, my son was diagnosed with at least nine major anomalies: these included a fluid-filled cranium with no brain tissue at all; compacted, flattened vertebrae; congenital hip dysplasia; skeletal dysplasia; and hypertoloric eyes. He would never have survived outside my womb.

Never in our lives had we imagined that a disaster like this could happen to us. We went home to our house in Naperville, to the bedroom prepared for out little boy—tiny clothes folded, crib assembled, walls painted—and we cried.

Our options were extremely limited because of my diabetes: I don't heal as well as other people so waiting for normal labor to occur, inducing labor early, or having a C-section would have had potentially severe health consequences for me. The best option was a highly specialized, surgical abortion

procedure developed for women with similar difficult conditions called an intact D&E.

The procedure was gentle and our baby boy was delivered intact. We held him and said our goodbyes. We named him Anthony.

Losing Anthony was the most difficult thing we have gone through. When I was asked to come to Washington to share this personal grief, I agonized over the decision to come forward. This is not an easy story to tell. It's very private and very painful. But I know there will be other women after me who will need this procedure. Contrary to the image that is portrayed by supporters of this bill, we are not mothers who want ''perfect babies'' or mothers who are having third-trimester abortions because of cleft palates and missing fingers. Well, yes, Anthony had a cleft palate. I wish to God that was his only problem! He wasn't just imperfect—his anomalies were incompatible with life. The only thing that was keeping him alive was my body. He could never have survived outside my womb, so I did the kindest thing, the most loving thing I know to do. I took my son off life support.

When I went to Washington to tell Congress the truth about this procedure, my oldest daughter asked me why I was going. I told her that I was going because of Anthony. Lindsay who was eleven at the time and very smart for her age, wanted to know why I had to go to Washington because her baby brother died. So I told her the whole story. When I finished she looked up at me with her great big eyes and said, without hesitation, ''Mommy, you did the right thing.'' It's a sad thing when an eleven-year-old is wiser than some Members of Congress.

Fortunately President Clinton listened to my story and the stories of families like mine and the tragedies we faced. He took the time to meet with me and hear how important it was for me to have the compassionate procedure. Holding Nicky in his arms, the President understood that that beautiful baby boy would not have been possible if it were not for the safety of the surgical procedure that protected my reproductive health.

Please stand with the President and vote to sustain his veto.

Sincerely,

VIKKI STELLA,
Naperville, Illinois.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, in the 14 years that I have served in Congress I have faced many votes on this issue. Not one of these votes has been an easy one. I have tried to make a decision of conscience in each case.

When I took a look at the drawings which the Republicans bring forward about this procedure, it troubled me. And I am sure as we hear this procedure described, it troubles us all, as it would most Americans.

But then one day a woman walked into my office whom I had never met before, from Naperville, IL. Her name was Vikki Stella. She said to me, ''Congressman, let me tell you my story. We had several children in our family and our baby was on the way. We had named the child. We had painted the nursery. We had the baby shower. And we were told late in the pregnancy that a sonogram disclosed that this poor new baby of ours would never survive because of tragic deformities.''

Because Vikki was also diabetic and had her own medical conditions to be concerned about, the doctors warned her that if she went through a normal pregnancy at that point she ran the risk of never having another child. A double tragedy: Losing this baby and never being able to bear another.

She and her husband laid awake at night crying over this decision. It was no frivolous, easy decision for selfish reasons, and they decided that it was best for them and their family to terminate that pregnancy with the procedure that would be prohibited and criminalized by this bill.

She cried as she told me this story, and I started to have a little tear in my eye too, as anyone would. And then she brightened up and she said, ''You know what, Congressman? I'm pregnant again. We are going to have another baby. We will never forget our baby that we left and lost in this procedure, but our family is going to have another chance.''

Think about that for a minute. Not one of us, not one of us would have wanted to face this tragedy with our family. But think of this possibility. If we override the President's veto, we would eliminate the medical procedure that gave Vikki Stella of Naperville, IL another chance to have a baby.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Florida [Mrs. THURMAN].

Mrs. THURMAN. Mr. Speaker, I thank the gentlewoman from Colorado for yielding this time and for her leadership.

Mr. Speaker, I have only one thing to say today. I want to ask in this forum what one of the women who has had this procedure has been asking for weeks: Who are we to judge her and her family's heartache?

I want this body to know that I listened closely to Vikki Stella's story of her family tragedy. I saw the anguish in her eyes, but I marveled at her willingness to retell the story of her heartache, of learning in the third trimester of fatal fetal abnormalities and the tremendous threat her diabetes presented if she were to deliver such a child.

The Stella family's decision was not easy, and it has not been easy for her to spend the last year fighting against this legislation, but she has done it. She told me and she has told others so families faced with this personal tragedy have options.

I want my colleagues to think about us who have had critical family health emergencies. We know that it is important that the medical community has the opportunity to tell us what will best preserve and protect the health and safety of our families. Intact D&E gave the Stella family the chance to protect Vikki's health so she could continue to be a good healthy mother for her two daughters. It also allowed Vikki and her husband, Archer, to have a beautiful son, Nicholas, who is now 8 months old.

I do not support third trimester abortions except for in severe health situations. Vikki's story shows us why American families need this severe health exception, and this legislation does not contain it.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentlewoman from California [Mrs. SEASTRAND].

Mrs. SEASTRAND. Mr. Speaker, today this body of Representatives decides one of the most profound moral debates in the history of our Nation. Our children will look upon this day to see if we stood for principle. Will we vote to defend and protect the women and future children of this Nation? Will we vote for principle over political party? Will we defend our children or the President's veto?

Almost as shameless as the President's veto were his efforts to paint himself as the defender of the health of women. According to Mr. Clinton, the life and health of women depend on the employment of this brutal procedure.

No less an authority than former Surgeon General C. Everett Koop has made it clear that a partial birth abortion is never necessary under any circumstance.

I commend Democrat leaders, the gentleman from Missouri [Mr. GEPHARDT] and the gentleman from Michigan [Mr. BONIOR], for their vote to ban partial birth abortions. And just as these two leaders stood up to their President, I hope all will follow their consciences and vote to override the President's veto.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, there is no issue that I agonize over, and I suspect many Members here agonize over, more than abortion. Except for the most committed on either side, the issues are not clear-cut and they are not easily resolved.

I also believe that reasonable limitations can be placed upon abortions performed late in pregnancy. But this legislation goes too far because it says doctors performing abortion using this procedure can be fined or jailed for 2 years.

The tragedy of this debate is not what is being said, it is what is not being said. Supporters say they want to prevent abortion. Yet the mothers who have this procedure, such as the women who have visited my office, did not want an abortion. They had to have this procedure to safeguard their health, their life, or because there was such a gross deformity of the fetus it was not likely to live.

It is important to note also what is not in this bill, Mr. Speaker: Any language that would permit the doctor to perform this procedure if the mother's health was seriously endangered. That is right. Even when a mother's health is seriously endangered a doctor performing this procedure can be jailed.

The supporters of this bill show dramatic pictures, artist's drawings, to make a case. Let me show a real photo

to make my case. This is Coreen Costello, who visited my office, and this is her family. Late in her pregnancy she learned the child she was carrying had a severe and fatal disability. Her doctors recommended this procedure because her child could not live and her health was seriously endangered. She had this procedure.

Mr. Speaker, she has now had another child, Tucker, and so this photo becomes even more complete with Tucker being added to it. There are other photos, Mr. Speaker, and other real families: Vikki Stella; Claudia Ades and her family.

Mr. Speaker, I cannot believe that when a mother's health is seriously endangered this Congress would stand between the mother, her family, and her God. There can be reasonable limitations, yes, on abortion, but I cannot support, Mr. Speaker, any legislation that is going to tell a doctor that if he or she performs the procedure that they feel necessary because a mother's health is seriously endangered, they can go to jail. I do not believe the American people want that either.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to my colleague, the gentleman from Florida [Mr. STEARNS].

Mr. STEARNS. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, it is difficult to comprehend an act that takes away the life of an infant just moments before his or her first breath. It is just as difficult to comprehend the veto of the bill that would halt this life-ending procedure by a President who claims to promote family values and respect for human life.

I have received over 8,000 letters and postcards from my constituents urging me on to vote to override President Clinton's veto of the partial birth abortion ban. I completely agree with these people. This procedure is a violation of the sixth Commandment: Thou shalt not murder.

In fact, hundreds of doctors, including Dr. Karrer, from Jacksonville, FL, a practicing obstetrician-gynecologist with 30 years' experience, all of them have come forward to say that partial birth abortions are never, never needed to preserve the life or fertility of the mother.

As we may recall, President Clinton's argument for vetoing this legislation was that this procedure is needed to prevent a serious adverse health consequence. However, the Supreme Court's definition of the term ''health'' includes all factors: physical, emotional, psychological. Using these definitions, partial birth abortions are justified for reasons ranging from the mother's depression to a baby's cleft palate.

Perhaps the President was misinformed, perhaps he turned a deaf ear to those who tried to give him these facts, or maybe he did not hear that 80 percent of partial birth abortions are performed for purely elective reasons. Whatever the case, President Clinton's arguments are flat-out wrong.

If President Clinton hears nothing else in all of these arguments, I urge him to listen to the words of Mother Teresa who said, ''The greatest destroyer of peace is abortion. Because if a mother can kill her own child, what is left? For me to kill you and you to kill me. There is nothing in between.''

I strenuously object to President Clinton's veto of this ban, and I urge my colleagues today to vote to override this shameful veto.

Mrs. SCHROEDER. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, this debate has nothing to do with murdering babies; it has everything to do with murdering the truth.

It is a deplorable and cynical move that the sponsors of this measure engage in to exploit the very deeply held and genuine religious convictions of millions of Americans.

□ 1145

If anyone, no matter how religious and how committed on this issue, really believes the opening statement of the gentleman from Florida [Mr. CANADY] that there are thousands of babies across this country that are being stabbed to death moments before they are born into this world, then I would say to all these antichoice Republican militants, ''The blood is on your hands this year, gentlemen, because you sat here after President Clinton wisely vetoed your bill on April 10.''

They sat here at the scene of these alleged scissors murders. They sat here through April; they sat here through May; they sat here through June; they sat here through July; they sat here through August doing little or nothing as these supposed thousands of murders took place. They sat here until election eve because they were not concerned about these procedures; you were concerned about gaining political advantage with the millions of Americans who are genuinely concerned about the question of abortion.

And, of course, my colleagues and their Republican antichoice militants, they have a broader pledge. Their pledge is to end every abortion, even when it results from rape, even when it results from incest. By golly, in Texas they even went a little further. They said even when a teenage father who will not marry the mother objects, there is not going to be any abortion. And this is the first step, not the last step, in addressing that agenda that mandates motherhood, whether the mother wants to or not.

This same crowd will then come to this Congress and begin talking about scissor murders which are not occurring in America today; this same crowd will be here then telling the American people what kind of birth control, if any, they can use. Today is the first time that American women, facing a troubling health decision, are told: Do not ask your doctor; ask your Congressman.

We are not going to follow that troubled path. It is time to stop meddling in the personal lives, in the most personal decision that American people face, that American women face.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Missouri [Mr. VOLKMER].

(Mr. VOLKMER asked and was given permission to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I rise to strongly urge Members to vote to override the President's veto on this legislation.

This legislation is much-needed if we are going to save the thousands of children who are killed unnecessarily each year by this procedure.

There is a provision in this bill that exempts those procedures where it is necessary in order to save the life of the mother. So all other procedures not necessary to save the life of the mother are just for the purpose of killing a baby, because the mother feels, or the doctor feels, that it is not appropriate to have this baby at this time.

It is a procedure that I feel, the scissors issues and the procedure is when this baby is at the moment of being born, taking its first breath and ready to live a life just like all of us, and then a moment comes where the doctor kills the baby, sucks it out and takes it out, and that is the end of it.

I say, let us vote to override the President's veto.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas [Mr. EDWARDS].

Mr. EDWARDS. Mr. Speaker, when this bill first came to the House floor, my wife was 8 months pregnant with our very first child. We were soon blessed to have a healthy baby who turned 9 months old yesterday. Our son is love of my wife's life and my life. He is the fulfillment of our hopes and dreams and prayers.

Yesterday, I met another little child named Nicholas Stella. Because Nicholas was born within 8 days of our own child, I could understand the joy of his mother as he playfully strode across my office floor.

Had this bill been law 2 years ago, Nicholas might not be alive today. As a new father, that is all the reason I need to vote to sustain this bill's veto.

This bill is not about saving baby's lives; it is about politics in an election year. This bill risks the fertility and health of women in order to make a political statement in a 30-second TV ad or 8-second sound bite.

What most citizens are not being told in America is that this bill will not outlaw late-term abortions; rather, it prohibits only one procedure that many physicians believe is needed to protect the health and fertility of a pregnant woman in tragic cases where her fetus has no chance of survival.

All other late-term abortion procedures under this bill would be perfectly

legal, even if those procedures pose a greater threat to a woman's health or fertility.

For anyone, for anyone here or elsewhere to suggest that I as a new father or anyone else in this House would want to allow the abortion of a healthy baby just moments before normal childbirth is ludicrous, it is deceptive, and it is totally dishonest.

Mr. DORNAN. And it happens.

Mr. EDWARDS. It does not happen.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Texas has the time.

Mrs. SCHROEDER. Regular order.

The SPEAKER pro tempore. The Chair would ask the gentleman from California [Mr. DORNAN] to please be seated. The Chair would ask the gentleman from California to abide by the rules of the House. The gentleman from Texas [Mr. EDWARDS] has the time.

Mr. DORNAN. I will, Mr. Speaker, but it happens. It happens.

Mrs. SCHROEDER. Regular order.

The SPEAKER pro tempore. The Chair would ask the gentleman from California to abide by the rules of the House. The gentleman from Texas [Mr. EDWARDS] has the time.

Mr. DORNAN. I will, Mr. Speaker, but it happens.

The SPEAKER pro tempore. The Chair would ask all Members to abide by the rules. The gentleman from Texas has the time.

Mr. EDWARDS. Mr. Speaker, if that happens anywhere at any time, if these Members of the House, including the one that just spoke, would work with us to pass a bill, we could put into law in the next few weeks, we could stop it from happening.

But for anyone to suggest, as they have in fliers and ads, that we want to allow the abortion of a healthy baby just moments before childbirth is, as I said before and say again, totally dishonest and disgusting.

I helped pass a bill that outlawed not one late-term-abortion procedure in Texas; we outlawed all late-term-abortion procedures in Texas. But in that bill that is now law in Texas we did what this bill should do. We said if the life or the health or the fertility of a woman is at risk, that moral and medical decisions should be made by a woman, her family and her doctor, and not by politicians and not by the government.

Mr. Speaker, I urge the Members of this House to support the veto of this ill-fated, ill-designed legislation.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. DORNAN].

(Mr. DORNAN asked and was given permission to revise and extend his remarks.)

Mr. DORNAN. Mr. Speaker, I rise in support of this bill and against infanticide and I will do a 1 hour special order tonight continuing the debate. I say to my colleagues, please join me tonight.

Mr. CANADY of Florida. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Utah [Ms. GREENE].

Ms. GREENE of Utah. Mr. Speaker, I first learned about the partial-birth-abortion practice about a year-and-a-half ago when I was pregnant with my daughter. At that time, I was asked to be a part of the original cosponsors of that bill and, frankly, I did not want to be involved.

At that point, I felt that if, as a pregnant women, I stepped forward to engage in this debate, that the abortion supporters would pillory me as the poster child of the right. I did not want to tarnish the excitement and the joy of my pregnancy with this gruesome debate.

But, Mr. Speaker, I had to change my mind after I read this. It is the Medical Journal article prepared by the doctor who pioneered this so-called practice, this so-called procedure. I read it through. I tried to forget what I had read. It haunted me for 2 weeks. I daily thought about what I had read here about a procedure that is, in fact, infanticide. And I decided that I had to step forward.

Mr. Speaker, this so-called procedure has been defended as an emergency procedure when, in fact, this procedure takes 3 days to complete because the practitioner has to induce labor for 2 days before the person who is receiving the abortion can go in to partially deliver the child.

It has been defended as being painless for the fetus, and yet anesthesiologists say, if they are using anesthetics for the mother appropriately, quote, ''Then it has little or no effect on the fetus. From a clinical point of view, you cannot depend on the fetus being asleep.'' That from the president of the Society for Obstetric Anesthesia and Perinatology.

Mr. Speaker, we have provided an exception where the life of the mother is at stake. This gruesome horrific practice is opposed by the American Medical Association legislative counsel. It has been opposed by C. Everett Koop, our former Surgeon General, who says he believes the President has been misled as to the medical facts behind this so-called procedure.

Mr. Speaker, I believe that the highest calling of this body is to protect the rights and interests of those who are too weak to protect themselves. Protect these children. Vote to override the President's veto and establish some civilized approach to a heinous practice that should not be allowed to continue in our Nation.

Mr. Speaker, today I will vote in favor of overriding President Clinton's veto of H.R. 1833, a bill to eliminate an abortion procedure commonly called a partial-birth abortion. I believe it is important for my colleagues to read a paper prepared by Dr. W. Martin Haskell describing the partial-birth abortion procedure, and to read an interview with Dr. Haskell in the Cincinnati Medicine. I would like to insert the interview and paper into the CONGRESSIONAL RECORD.

[From Cincinnati Medicine, Fall 1993]

SECOND TRIMESTER ABORTION

AN INTERVIEW WITH W. MARTIN HASKELL, MD

Last summer, American Medical News ran a story on abortion specialists. Included was W. Martin Haskell, MD, a Cincinnati physician who introduced the D&X procedure for second trimester abortions. The Academy received several calls requesting information about D&X. The following interview provides an overview.

Q. What motivated you to become an abortion specialist?

A: I stumbled into it by accident. I did an internship in anesthesia. I worked for a year in general practice in Alabama. I did two years in general surgery, then switched into family practice to get board certified. My intentions at that time were to go into emergency medicine. I enjoyed surgery, but I realized there was an abundance of really good surgeons here in Cincinnati. I didn't feel I'd make much of a contribution. I'd be just another good surgeon. While I was in family practice, I got a parttime job in the Women's Center. Over the course of several months. I recognized things there could be run a lot better, with a much more professional level of service—not necessarily in terms of medical care—in terms of counseling, the physical facility, patient flow, and in the quality of people who provided support services. The typical abortion patient spends less than ten minutes with the physician who performs the surgery. Yet, that patient might be in the facility for three hours. When I talked to other physicians whose patients were referred here, I saw problems that could be easily corrected. I realized there was an opportunity to improve overall quality of care, and make a contribution. I own the center now.

Q: Back in 1979 when you were making these decisions, did you consider yourself pro-choice?

A: I've never been an activist. I've always felt that no matter what the issue, you prove your convictions by your hard work—not by yelling and screaming.

Q: Have there been threats against you?

A: Not directly. Pro-life activist Randall Terry recently said to me that he was going to do everything within his power to have me tried like a Nazi war criminal.

Q: A recent American Medical News article stated that the medical community hadn't really established a point of fetal viability. Why not?

A: Probably because it can't be established with uniform certainty. Biological systems are highly variable. The generally accepted point of level viability is around 24–26 weeks. But you can't take a given point in fetal development and apply that 100 percent of the time. It just doesn't happen that way. If you look at premature deliveries and survival percentages at different weeks of gestation, you'll get 24-week fetuses with some survival rate. The fact that you get some survivors demonstrates the difficulty in defining a point.

Q: Most women who get abortions end pregnancies during the first trimester. Who is the typical second-trimester patient?

A: I don't know that there is a typical second-trimester abortion. But if you look at the spectrum of abortions (most women are between the ages of 19 and 29) they tend to be younger. Some are older. The typical thing that happens with older women is that they never realize they were pregnant because they were continuing to bleed during the pregnancy. The other thing we see with older women is fetal malformations or Down's

Syndrome. These are being diagnosed much earlier now than they used to be. We're seeing a lot of genetic diagnoses with ultrasound and amniocentesis at 17–18 weeks instead of 22–24 weeks. With the teenagers, anybody who has ever worked with or had teenagers can appreciate how unpredictable they can be at times. They have adult bodies, but a lot of times they don't have adult minds. So their reaction to problems tends to get much more emotional than an adult's might be. It's a question of maturity. So even though they may have been educated about all kinds of issues in reproductive health, when a teenager becomes pregnant, depending up on her relationship with her family, the amount of peer support she has—every one is a highly-individual case—sometimes they delay until they can no longer contain their problem and it finally comes out. Sometimes it's money: It takes them a while to get the money. Sometimes its just denial.

Q: Do you think more information on abstinence and contraceptives would decrease the number of teenage pregnancies?

A: I grew up in the sixties and nobody talked about contraception with teenagers in the sixties. But today, though it may be controversial in some areas, there's a lot being taught about reproductive health in the high school curricula. I think a lot more is being done, but the bottom line is we're all still just human—with human emotions, and particularly with teenagers, a sense of invulnerability; it can't happen to me. So education helps a lot, but it's not going to eliminate the problem. You can teach a person the skills, but you can't make them use them.

Q. Does it bother you that a second trimester fetus so closely resembles a baby?

A: I really don't think about it. I don't have a problem with believing the fetus is a fertilized egg. Sure it becomes more physically developed but it lacks emotional development. It doesn't have the mental capacity for self-awareness. It's never been an ethical dilemma for me. For people for whom that is an ethical dilemma, this certainly wouldn't be a field they'd want to go into. Many of our patients have ethical dilemmas about abortion. I don't feel it's my role as a physician to tell her she should not have an abortion because of her ethical feelings. As individuals grow and mature, learn more, feel more, experience more, their perspective about themselves and life, morality and ethics change. Facing the situation of abortion is a part of that passage through life for some women—how they resolve that is their decision. I can be their advisor much as a lawyer can be; he can tell you your options, but he can't make you file a suit or tell you not to file a suit. My role is to provide a service and, to a limited degree, help women understand themselves when they make their decision. I'm not to tell them what's right or wrong.

Q. Do your patients ever reconsider?

A. Between our two centers, that happens maybe once a week. There's a patient who changes her mind or becomes truly ambivalent and goes home to reconsider, then might come back a week or two later. I feel that's one of the strengths of how we approach things here. We try not to create pressure to have an abortion. Our view has always been that there are enough women who want abortions that we don't have to coerce anyone to have one. We've always been strongly against pressure on our patients to go ahead with an abortion.

Q. How expensive is a second trimester abortion?

A: Fees range from $1,200–$1,600 depending on length of pregnancy. More insurance companies cover abortion that don't cover it. About 15 percent of our patients won't use insurance because they want to maintain privacy. About 10–20 percent use insurance. The rest pay out of pocket.

Q. What led you to develop D & X?

A: D & E's, the procedure typically used for later abortions, have always been somewhat problematic because of the toughness and development of the fetal tissues. Most physicians do terminations after 20 weeks by saline infusion or prosteglandin induction, which terminates the fetus and allows tissue to soften. Here in Cincinnati, I never really explored it, but I didn't think I had that option. There certainly weren't hospitals willing to allow inductions past 18 weeks—even Jewish, when they did abortions, their limit was 18 weeks. I don't know about University. What I saw here in my practice, because we did D & Es, was that we had patients who needed terminations at a later date. So we learned the skills. The later we did them, the more we saw patients who needed them still later. But I just kept doing D & Es because that was what I was comfortable with, up until 24 weeks. But they were very tough. Sometimes it was a 45-minute operation. I noticed that some of the later D & Es were very, very easy. So I asked myself why can't they all happen this way. You see the easy ones would have a foot length presentation, you'd reach up and grab the foot of the fetus, pull the fetus down and the head would hang up and then you would collapse the head and take it out. It was easy. At first, I would reach around trying to identify a lower extremity blindly with the tip of my instrument. I'd get it right about 30–50 percent of the time. Then I said, 'Well gee, if I just put the ultrasound up there I could see it all and I wouldn't have to feel around for it.'' I did that and sure enough, I found it 99 percent of the time. Kind of serendipity.

Q. Does the fetus feel pain?

A: Neurological pain and perception of pain are not the same. Abortion stimulates fibers, but the perception of pain, the memory of pain that we fear and dread are not there. I'm not an expert, but my understanding is that fetal development is insufficient for consciousness. It's a lot like pets. We like to think they think like we do. We ascribe human-like feelings to them, but they are not capable of the same self-awareness we are. It's the same with fetuses. It's natural to project what we feel for babies to a 24-week old fetus.

THE D & X PROCEDURE

Dilation and Extraction (D & X), a method for second trimester abortion up to 26 weeks, was developed in 1992 by Cincinnati physician W. Martin Haskell, MD. It is a modification of Dismemberment and Extraction (D & E) which has been used in the US since the 1970s. Haskel has performed more than 700 D & X procedures in his office.

Step One—The patient's cervix is dilated to 9–11 mm over a period of two days using Dilapan hydroscopic dilators. The patient remains at home during the dilation period.

Step Two—In the operating room, patients are given Valium, the Dilapan are removed and the cervix is scrubbed, anesthetized and grasped with a tenaculum. Membranes are ruptured.

Step Three—The surgical assistant scans the fetus with ultrasound, locating the lower extremities.

Step Four—Using a large forcep, the surgeon opens and closes its jaws to firmly grasp a lower extremity. The surgeon turns the fetus if necessary and pulls the extremity into the vagina.

Step Five—The surgeon uses his fingers to deliver the opposite lower extremity, then the torso, shoulders, and upper extremities.

Step Six—The skull lodges at the intemal cervical os. Usually there is not enough dilation for it to pass through. The fetus is spine up.

Step Seven—A right-handed surgeon slides the fingers of his left hand along the back of the fetus and hooks the shoulders of the fetus with the index and ring fingers (palm down). He slides the tip of his middle finger along the spine towards the skull while applying traction to the shoulder and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

Step Eight—While maintaining this tension, the surgeon takes a pair of blunt curved scissors in the right hand. He advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger. The surgeon forces the scissors into the base of the skull and spreads the scissors to enlarge the opening.

Step Nine—The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents.

Step Ten—With the catheter still in place, he applies traction to the fetus, removing it completely from the patient, then removes the placenta.

DILATION AND EXTRACTION FOR LATE SECOND TRIMESTER ABORTION

(By Martin Haskell, M.D.)

INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term Dilation and Extraction or D&X to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20–26 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

BACKGROUND

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a ''right now'' solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early second trimester abortion to avoid necessary delays for instillation methods.[1] The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.[2, 3, 4]

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.[5]

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissues at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.[6, 7, 8]

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.[9]

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

Footnotes are at the end of article.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

PATIENT SELECTION

The author routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP.

The author refers for induction patients falling into the following categories:

Previous C-section over 22 weeks.

Obese patients (more than 20 pounds over large frame ideal weight).

Twin pregnancy over 21 weeks.

Patients 26 weeks and over.

DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows:

Dilation
MORE DILATION
Real-time ultrasound visualization
Version (as needed)
Intact extraction
Fetal skull decompression
Removal
Clean-up
Recovery

Day 1—Dilation

The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthesized and dilated to 9–11mm. Five, six or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

Day 2—More Dilation

The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthesized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

Day 3—The Operation

The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 IU Pitocin intramuscularly. The cervix is scrubbed, anesthesized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The tranducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as a Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up.

At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and ''hooks'' the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

Recovery

Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

ANESTHESIA

Lidocaine 1% with epinephrine administered intra-cervically is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change, 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100 mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given proplylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synalogos DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

FOLLOW-UP

All patients are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique. He adds additional changes of Dilapan and/or lamineria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.[10]

SUMMARY

In conclusion, Dilation and Extraction is an alternative method for achieving late second trimester abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill, and may not be appropriate for a few patients.

REFERENCES

[1]Cates, W. Jr., Schulz, K.F., Grimes D.A., et al: The Effects of Delay and Method of Choice on the Risk of Abortion Morbidity, ''Family Planning Perspectives.'' 9:266, 1977.

[2]Borell, U., Emberey, M.P., Bygdeman, M., et al: Midtrimester Abortion by Dilation and Evacuation (Letter), American Journal of Obstetrics and Gynecology, 131:232, 1978.

[3]Centers for Disease Control: ''Abortion Surveillance 1978,'' p. 30, November, 1980.

[4]Grimes, D.A., Cates, W. Jr., (Berger, G. S., et al, ed): Dilation and Evacuation, ''Second Trimester Abortion—Perspectives After a Decade of Experience,'' Boston, John Wright—PSG, 1981, p. 132.

[5]Ibid, p. 121–128.

[6]Ibid, p. 121.

[7]Kerenyi, T.D. (Bergen, G.S., et al, ed): Hypertonic Saline Instillation, ''Second Trimester Abortion—Perspectives After a Decade of Experience,'' Boston, John Wright—PSG, 1981, p. 79.

[8]Hanson, M.S. (Zatuchni, G.I., et al, ed): Midtrimester Abortion: Dilation and Extraction Preceded by Laminaria, ''Pregnancy Termination Procedures, Safety and New Developments,'' Hagerstown, Harper and Row, 1979, p. 192.

[9]Hern, W.M., ''Abortion Practice,'' Philadelphia, J.B. Lippincott, 1990, p. 127, 144–6.

[10]McMahon, J., personal communications, 1992.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California [Ms. LOFGREN], a member of the committee.

Ms. LOFGREN. Mr. Speaker, this vote today regrettably has more to do with politics than it has to do with medicine or what families need. We know that the 30-second ads are running throughout the country—the hit pieces and mailers are going forward. It is a political issue for this Congress, but it is a real life issue for families that need this procedure.

I saw Viki Wilson, my friend, yesterday. I was friends with her mother-in-law, Suzy, for 20 years, and I remember April 8, 1994 when they lost their daughter, Abigail.

Abigail was a much-wanted child. They had two baby showers for her. The nursery was garnished with pink ribbons, but they found out in the eighth month that Abigail's brain had formed outside of the cranium and there was no way that Abigail could survive.

They sought medical help to see whether some medical procedure could

be done to cure the defect in Abigail. They wanted her to live. But instead, their doctor advised that this procedure should be used so that Viki's uterus would not burst, so that they might have an opportunity to have another child, which they wanted to do.

I remember the tears and the prayers of the friends of the Wilson family at that time. They needed friendship. They needed the Lord's help and guidance. They did not need the Congress of the United States to be involved in political wedge issues.

This is about politics. Although I disagree with the gentleman from Illinois [Mr. HYDE], the chairman of the Committee on the Judiciary, I do respect him. He has announced publicly that his goal is to have a constitutional amendment to preclude all abortions in America. I do not agree with him, but I respect his honesty in saying that.

This is the first step toward that. It is about politics, and I hope that the American people understand that.

In closing, I got a call from my late mother's very best friend, a devout Catholic who goes to Mass every single morning, and she told me that the priest had asked her to distribute cards against this procedure and she refused to do so.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. WELDON].

Mr. WELDON of Florida. Mr. Speaker, I thank the gentleman for yielding and I rise in strong support of this veto override. And I want to address one very important issue in this debate. I remember reading the original American Medical News article back in 1993 when it came across my desk, when I was still practicing medicine, describing this procedure. And the people on the other side keep talking about these particular cases where we may, on an emotional basis, be able to justify doing such a gruesome procedure, but those doctors, Haskell and McMahon, admitted that in 85 percent of the cases these were in perfectly normal, healthy babies.

□ 1200

Partially delivering the baby, arms and legs moving, putting a scissors in the back of the head and then sucking the brains out in a perfectly normal healthy baby, 58 percent of the cases. In the 15 percent of cases where there was birth defects, the majority of them were nonlethal birth defects, cleft lip, cleft palate.

What kind of a nation are we, what kind of people are we where we would allow this procedure to be done on not only a healthy baby but a baby that simply has a cleft lip and a cleft palate? Where is our soul?

Mr. Speaker, I personally believe that when the President vetoed this bill, it was the most cynical and despicable thing that he has ever done in his 4 years in the White House. I urge all my colleagues to vote in support of this veto override.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New York [Ms. SLAUGHTER].

Ms. SLAUGHTER. Mr. Speaker, everything about this debate is heartbreaking. It is heartbreaking the misinformation that has been disseminated. The thing that hurts me most hurt me back in the days before abortion was legal for women. And that is that women have no rights or abilities to choose. They are not bright enough. They are not nurturing enough. They do not have enough sense. It is only up to men in suits and ties to tell them what is good for them and how to think.

Imagine a scene in a doctor's office where a doctor, a woman, her husband, awaiting a baby, desperately excited about it. The doctor says, I have bad news for you. Something seriously has gone wrong and we need to discuss our options. Now, they have some options. If this Congress has its ways, they will not.

I remember as I grew up, young girls, knew that their future at the point of giving birth, if there was to be a choice between their lives or the baby would die. I remember kids, when I was growing up, who had no mother. She had died in childbirth. The woman who would have been my mother-in-law died in childbirth. My husband had a very difficult time ever finding out anything about her. No one wanted to talk about her.

Before I gave birth to my first child, I worried terribly about that. I wondered, if my husband would be married again, would he marry a woman, as my father-in-law had, someone who would never discuss who I was or what I meant. Now, fewer women die in childbirth. There are options.

How in the world can we make these kinds of decisions? It is the height of hypocrisy for Congress to decide. These babies that are aborted are desperately wanted. If they were not wanted, if the woman did not want this baby, she would have had the abortion early. There would have been no question about it. After waiting this long, carrying that child, you may believe me that child is wanted. The tragedy of a woman who said she could feel life and learned later that this was only seizures because the baby's brain was outside its body, the tragedy of a woman whose fetus had no lungs and yet people on radio programs said to her, why could you not give it the chance to live. How could it live?

Can we please be sensible here and determine that American men and women really want what is best for their families. If we talk family values and family love, we have to say that families have some right to make some choices without an infallible Congress interfering.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. HALL].

Mr. HALL of Ohio. Mr. Speaker, this procedure is simply wrong. A compassionate society should not promote a procedure that is gruesome and inflicts pain on the victim. We have humane methods of capital punishment, and we have humane treatment of prisoners. We even have laws to protect animals. It seems to me we should have some standards for abortion as well.

This procedure is only performed in a few places around the country. Unfortunately one of those places is in my district. A local city council in Kettering, OH, took the rare step and passed a resolution supporting the override of the President's veto. I submit that in the RECORD at this time:

CITY OF KETTERING, OH, STATEMENT OF PERSONAL INTENT SUPPORTING AN OVERRIDE OF THE PRESIDENTIAL VETO OF THE PARTIAL-BIRTH ABORTION BAN ACT OF 1995

Whereas: the partial birth abortion method has been the subject of action by both the U.S. Senate through SB 939 and the U.S. House of Representatives through HB 1833 both of which pieces of legislation amend Title 18 of the United States Code; and

Whereas: this legislation received bi-partisan support and passed by sizeable majorities; and

Whereas: President Clinton vetoed that legislation on April 10, 1996; and

Whereas: the members of Council feel that the partial birth abortion procedure should not be permitted.

Now, therefore, be it made known:

SECTION 1. The members of the Council of the City of Kettering who are present urge the U.S. House of Representatives and the U.S. Senate to overrride President Clinton's veto of the legislation referred to in the introductory paragraphs of this resolution.

SECTION 2. The residents of Kettering are encouraged to become informed about this issue and then to contact Senator DeWine, Senator Glenn and Representative Hall, as well as other congressional representatives, to make their opinions known.

Mayor Richard P. Hartman, Vice Mayor Marilou W. Smith, Councilmember John J. Adams, Councilmember Keith Thompson, Councilmember Raymond P. Wasky, Councilmember John J. White.

July 23, 1996.

Finally, I do not want to discuss a bill relating to abortion without saying that I also have a deep moral obligation to improving the quality of life for children after they are born. I could not sit here and honestly debate this subject with a clear conscience if I did not spend a good portion of my time working on childhood hunger and trying to help families achieve a just life.

I urge my colleagues to vote for this bill.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. CAMPBELL].

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Speaker, some of us are called to the ministry. Some of us are called to the priesthood or the rabbinate. We are called to be Members of Congress. When we take our obligation, we swear an oath to uphold and defend the Constitution of the United States.

This bill is unconstitutional. Our highest obligation is to uphold and defend the Constitution because that is

the oath that we take. Hence, we should vote no.

Many conservative legal scholars applauded the Supreme Court's opinion in 1995, United States versus Lopez; so did I. In that case, the Supreme Court struck down the attempt by Congress to restrict the possession of handguns in schools. Not because it was a bad idea; I happen to think it is a great idea to restrict handguns in schools. But because it was beyond the ability of Congress; because it had nothing to do with interstate commerce. The Supreme Court said:

The Constitution mandates * * * withholding from Congress a plenary police power that would authorize enactment of every type of legislation.

The Supreme Court ruled that, in order for the Federal Government to have authority, the subject matter of the bill there had to be control over a means of interstate commerce, or interstate commerce itself, or something which had a substantial effect upon interstate commerce. None of those premises was present in that instance.

The Supreme Court then gave examples of the kinds of things that the Federal Government constitutionally could not regulate. The examples they gave were ''family law,'' ''marriage,'' ''divorce,'' ''child custody,'' ''criminal law enforcement,'' ''child rearing.'' I am quoting each of those phrases from the Supreme Court opinion.

What we have today is an attempt to regulate beyond the ability of Congress to regulate. Conservatives, who are so careful to protect the rights of the individual States against the intrusion of the Federal Government, should listen to the words of James Madison in the Federalist No. 45 and agree that this is an unconstitutional act. Madison's words were, ''The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite.''

Please obey your oath of office. Do not allow this unconstitutional law to become law.

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

I would point out to the gentleman from California that the language of the bill specifically provides that any physician who in or affecting interstate or foreign commerce knowingly performs a partial birth abortion. The provisions of the bill, specifically, only govern those circumstances in or affecting interstate commerce.

Mr. Speaker, I yield 1 minute to the gentleman from South Carolina [Mr. INGLIS].

Mr. INGLIS of South Carolina. Mr. Speaker, there are a lot of victims of abortion walking around today, people who now realize what they did. In fact, it is almost in all of our families, somebody had an abortion that now they know what it was.

I cannot believe the Orwellian language on this floor today, that Members actually defend this procedure. The gentlewoman from Texas in the back of the Chamber said earlier, this is only about life of the mother. It is not. The guy who does this says that 80 percent of his cases are solely for convenience. So why did she say that? Why did the gentleman from Texas say things like, this is only about life? Why did the gentleman from California say it is about interstate commerce?

Let me tell my colleagues what this is about: This is about a procedure where an abortionist delivers all but the head of a child. It does not deal with interstate commerce. That is not the essence of this. It is about sucking the brains of the child out. That is amazing that we would rely on that.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

I include for the RECORD letters from the American Nurses Association, the American College of Obstetricians and Gynecologists, and the American Medical Women's Association.

AMERICAN NURSES ASSOCIATION,
Washington, DC, July 30, 1996.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As the Congress prepares to reconsider vetoed legislation which would prohibit health care providers from performing a certain type of late-term abortions, I am writing to commend you for your veto of H.R. 1833 and to reiterate the opposition of the American Nurses Association to this legislation.

It is the view of the American Nurses Association that this proposal would involve an inappropriate intrusion of the federal government into a therapeutic decision that should be left in the hands of a pregnant woman and her health care provider. ANA has long supported freedom of choice and equitable access of all women to basic health services, including services related to reproductive health. This legislation would impose a significant barrier to those principles.

Furthermore, very few of those late-term abortions are performed each year, and they are necessary either to protect the health of the mother or because of severe fetal abnormalities. It is inappropriate for Congress to mandate a course of action for a woman who is already faced with an intensely personal and difficult decision. This procedure can mean the difference between life and death for a woman.

The American Nurses Association is the only full-service professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

The American Nurses Association respectfully urges members of Congress to uphold your veto when H.R. 1833 is considered again.

Sincerely,

GERI MARULLO, MNS, RN
Executive Director.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Albany, NY, August 1, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: The American College of Obstetricians and Gynecologists (ACOG), District II, an organization representing more than 3,000 physicians practicing in New York State, does not support HR 1833, the ''Partial-Birth Abortion Ban Act of 1995.'' As an organization dedicated to improving women's health care, ACOG, District II is disturbed that Congress would take any action that would supersede the medical judgment of trained physicians and would criminalize medical procedures that may be necessary to save the life of a woman. Further, this legislation employs terminology that is not even recognized in the medical community to define what procedures doctors may or may not perform. This clearly demonstrates why Congressional opinion should never be substituted for professional medical judgment. For these reasons, ACOG, District II supports your decision to veto this legislation.

Thank you for considering our views on this important matter.

Sincerely,

JOHN G. BOYCE, MD,
Chairperson.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Burlington, MA, August 1, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 37,000 physicians dedicated to improving women's health care, does not support H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. The College finds it very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, H.R. 1833 employs terminology that is not even recognized in the medical community—thus demonstrating that Congressional opinion should never be substituted for professional medical judgment. Accordingly, ACOG supports your decision to veto this legislation.

Thank you for considering our views on this important matter.

Sincerely,

JOSEPH K. HURD, Jr., M.D.,
Chairman, Massachusetts Section.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Harrisburg, PA, August 1, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: The Pennsylvania Section of the American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 1,700 physicians dedicated to improving women's health care in the state of Pennsylvania, does not support H.R. 1833, the Partial-Birth Abortion Ban Act of 1995.

The PA Section of ACOG finds it very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, H.R. 1833, employs terminology that is not even recognized in the

medical community—demonstrating why Congressional opinion should never be substituted for professional and medical judgment.

Accordingly, the PA Section of ACOG supports your decision to veto this legislation.

Thank you for considering our views on this important matter.

Sincerely,

OWN C. MONTGOMERY, MD,
Section Chairman.
KRISTI WASSON,
Executive Director.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Albuquerque, NM, August 2, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: The New Mexico section of ACOG fully supports your decision to veto H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. We find it very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman.

I am sending a copy of this letter to the New Mexico members of Congress hoping that you all will consider our views in this matter.

Respectfully,

LUIS B. CURET, M.D.,
Chairman, NM ACOG.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Lincoln, NE, August 5, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 37,000 physicians dedicated to improving women's health care, does not support H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. The College finds very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, H.R. 1833 employs terminology that is not even recognized in the medical community—demonstrating why congressional opinion should never be substituted for professional medical judgment. Accordingly, ACOG supports your decision to veto this legislation.

Thank you for considering our views on this important matter.

Sincerely,

JOSEPH G. ROGERS, M.D.,
Chairman, Nebraska Section.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Memphis, TN, August 6, 1996.

WILLIAM JEFFERSON CLINTON,
The President of the United States of America, The White House, Washington, DC.

DEAR MR. PRESIDENT: I write in support of your veto of H.R. 1833. The Tennessee Section of the American College of Obstetricians and Gynecologists similarly does not support any governmental action that would intervene in a Physician's ability to apply his or her best medical judgment. Similarly, we do not support any legislation which would criminalize medical procedures that may be necessary to save the life of a woman. Our particular concern is the terminology used in H.R. 1833. The term ''partial-birth abortion'' is not one which is an accepted or defined medical term. We fully support your decision to veto this legislation.

We appreciate your consideration in this matter.

Sincerely,

FRANK W. LING, M.D.,
Faculty Professor and Chair, Department of Obstetrics and Gynecology, University of Tennessee College of Medicine.

AMERICAN MEDICAL WOMEN'S ASSOCIATION, INC.,
Alexandria, VA, July 31, 1996.

Hon. HERBERT H. KOHL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KOHL: On behalf of the American Medical Women's Association, a national organization representing more than 11,000 women physicians and medical students, and several of our branches, we are writing to urge your opposition to H.R. 1833, which would outlaw a particular abortion procedure—the D and E (dilation and extraction) technique, referred to as the ''partial-birth'' abortion method by those opposed to abortion. Although this bill was vetoed by President Clinton, we understand that efforts are under way to override his veto.

As physicians, we oppose any laws and court rulings that interfere with the doctor-patient relationship, either in requiring or proscribing specific medical advice to pregnant women. Further, we oppose any measures that limit access to medical care for pregnant women, particularly the poor or underserved, and measures that involve spousal or parental interference with a woman's personal decision to terminate pregnancy. This bill would not only restrict the reproductive rights of American women but also impose legal requirements for medical care decisions.

Our organization strongly oppose H.R. 1833 on several grounds. We support a woman's right to determine whether to continue or terminate her pregnancy without government restrictions placed on her physicians' medical judgment and without spousal or parental interference. This bill would subject physicians to civil action and criminal prosecution for making a particular medical decision. We do not believe that the federal government should dictate the decisions of physicians and feel that passage of H.R. 1833 would in effect prescribe the medical procedures to be used by physicians rather than allow physicians to use their medical judgment in determining the most appropriate treatment for their patients. The passage of this bill would set a dangerous precedent—undermining the ability of physicians to make medical decisions. It is medical professionals, not the President or Congress, who should determine appropriate medical options.

Sincerely,

Jean Fourcroy, MD, PhD, *President, American Medical Women's Association;* Robin Oshman, MD, *President, AMWA Branch 100, Fairfield County, Connecticut;* Jill Braverman Panza, MD, *President, AMWA Branch 102, Albany, New York;* Rosalinda Rubenstein, MD, *President, AMWA Branch 14, New York City, NY;* Kathryn Budzack, MD, *Co-President, AMWA Branch 86, Madison, Wisconsin.*

Mr. Speaker, I yield the balance of my time, 2 minutes, to the very distinguished gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Speaker, this debate is not about abortion on demand in the 7th, 8th, or 9th month. Roe versus Wade and the law of the land allows for States to make that procedure illegal. So the specter of perfect babies being killed moments before they draw their first breaths is irrelevant to the discussion here today and are being used as a way to inflame the rhetoric and cloud the debate.

What we are fighting about today is whether or not we should have a specific provision in the law allowing when the mother's life or health is threatened, that this procedure be available.

We have started this debate with a picture. I wonder about some other pictures. Where is the picture of these moms who are for the most part older, married, have other children, are in the pregnancy that is desperately wanted, celebrated, with babies' rooms already decorated, tiny little clothes already purchased? Where is the picture of the agony that these families go through, cry through, pray through over the promise of a pregnancy that will never be fulfilled?

Where is the picture of the horrible second guessing, the terrible hoping against hope that some sort of miracle is going to save this baby that can never live, all the while the mother knows that her health or her ability to have another baby could very much be in jeopardy? Where is the picture of mothers like Tammi Watts who weeped when asked the question, do you have any other children? She said, well, I have one baby in heaven. That is not a woman who would cheerfully end a baby's life moments before it would draw its first breath.

Do not believe the discussion we are hearing today. Look at the pictures. Look at the facts. The debate is whether or not we will allow a woman's health to be an exemption from this law. One side says no, our side says yes. Get the real picture.

Mr. CANADY of Florida. Mr. Speaker, I yield the balance of my time to the gentleman from New Jersey [Mr. SMITH].

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from New Jersey [Mr. SMITH] is recognized for 3 minutes.

Mr. SMITH of New Jersey. Mr. Speaker, let us stop kidding ourselves. Partial birth abortion is child abuse. That some otherwise smart and even brilliant people have been so thoroughly fooled by the abortion industry's outrageous lies and distortions and half-truths and those surface appeal arguments is at best disappointing and unsettling.

How can anyone in this Chamber or in the White House defend sticking a pair of scissors into a partially born child's head so as to puncture the child's skull and then a suction catheter is inserted to suck out the child's brains? How can anybody defend that?

My wife Marie is a former elementary schoolteacher. This morning she said that, if a child or a student were to do that to her doll, stick the doll in the back of the head with scissors, we

would think the child needed psychological counseling and would immediately call for that kind of help. Yet the abortion President, Bill Clinton, seeks to continue legal sanction of this gruesome assault on children, with real scissors and real babies.

Finally, we are seeing what the right to choose really means executing untold thousands of children by stabbing them and sucking out their brains. I guess we now know how far the so-called prochoice movement will go to sustain the Orwellian supermyth that abortion is somehow sane, somehow compassionate, and even prochild.

Americans will now see that the real extremists are not the people who insist on calling attention to the grisly details of abortion, dismemberment of the baby's fragile body, brain-sucking abortions or chemical injections. They will see that the people who actually dismember, poison, or hold the scissors at the base of the skull, they are the dangerous people.

Mr. Speaker, there are a lot of myths that the abortion lobby has circulated about partial-birth abortion. This past Sunday in the Sunday Record (of Bergen), a proabortion newspaper in my State, again exposed the lie that there are 500 partial-birth abortions in the country each year. The proabortion lobby seeks to trivialize the issue by grossly undercounting the actual number. The article, however, points out that in one New Jersey abortion mill alone, each year 1,500 partial-birth abortions are performed.

☐ 1215

The Record article also points out that the indicators for most of those abortions are nonmedical in that abortion clinic. Just like Dr. Haskill, one of the pioneers in this gruesome procedure, who has said that 80 percent of those who he sees are doing it for purely elective reasons. The Sunday Record pointed out, and I quote:

Interviews with physicians who use the method reveal that in New Jersey alone at least 1,500 partial-birth abortions are performed each year, three times the supposed national rate. Moreover, doctors say that only a minuscule amount are for medical reasons.

Mr. Speaker, it is time to begin to stand up for these unborn children and these partially born children and these newly born children. This is a matter of human rights. The abortion side, the abortion lobby, has sanitized these killings, they have kept people in the dark. But, the dirty secret of the abortion rights movement is finally out: Abortion kills babies, it is child abuse and we can stop some of that abuse by overriding Bill Clinton's antichild veto.

The SPEAKER pro tempore (Mr. LAHOOD). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. CANADY] to discharge the Committee on the Judiciary from the further consideration of the veto message on H.R. 1833.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CANADY of Florida. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 288, nays 133, not voting 12, as follows:

[Roll No. 421]

YEAS—288

Allard	Dornan	Klink
Archer	Doyle	Klug
Armey	Dreier	Knollenberg
Bachus	Duncan	Kolbe
Baesler	Dunn	LaFalce
Baker (CA)	Ehlers	LaHood
Baker (LA)	Ehrlich	Largent
Baldacci	English	Latham
Ballenger	Ensign	LaTourette
Barcia	Eshoo	Laughlin
Barr	Everett	Lazio
Barrett (NE)	Ewing	Leach
Barrett (WI)	Fawell	Lewis (CA)
Bartlett	Flanagan	Lewis (KY)
Barton	Foley	Lightfoot
Bass	Forbes	Linder
Bateman	Fowler	Lipinski
Bereuter	Fox	Livingston
Bevill	Franks (NJ)	LoBiondo
Bilbray	Frisa	Lucas
Bilirakis	Funderburk	Manton
Bliley	Gallegly	Manzullo
Blute	Gekas	Martinez
Boehner	Gephardt	Martini
Bonilla	Geren	Mascara
Bonior	Gilchrest	McCollum
Bono	Gillmor	McCrery
Borski	Goodlatte	McDade
Brewster	Goodling	McHale
Browder	Gordon	McHugh
Brownback	Goss	McInnis
Bryant (TN)	Graham	McIntosh
Bunn	Greene (UT)	McKeon
Bunning	Gunderson	McNulty
Burr	Gutknecht	Metcalf
Burton	Hall (OH)	Meyers
Buyer	Hall (TX)	Mica
Callahan	Hamilton	Miller (FL)
Calvert	Hancock	Minge
Camp	Hansen	Moakley
Canady	Hastert	Molinari
Castle	Hastings (WA)	Mollohan
Chabot	Hayworth	Montgomery
Chambliss	Hefley	Moorhead
Chenoweth	Hefner	Moran
Christensen	Herger	Murtha
Chrysler	Hilleary	Myers
Clement	Hobson	Myrick
Clinger	Hoekstra	Neal
Coble	Hoke	Nethercutt
Coburn	Holden	Neumann
Collins (GA)	Hostettler	Ney
Combest	Houghton	Norwood
Condit	Hunter	Nussle
Cooley	Hutchinson	Oberstar
Costello	Hyde	Obey
Cox	Inglis	Ortiz
Cramer	Istook	Orton
Crane	Jacobs	Oxley
Crapo	Johnson (SD)	Packard
Cremeans	Johnson, Sam	Parker
Cubin	Jones	Paxon
Cunningham	Kanjorski	Payne (VA)
Danner	Kaptur	Peterson (MN)
Davis	Kasich	Petri
de la Garza	Kennedy (MA)	Pombo
Deal	Kennedy (RI)	Pomeroy
DeLay	Kildee	Porter
Diaz-Balart	Kim	Portman
Dickey	King	Poshard
Dingell	Kingston	Pryce
Doolittle	Kleczka	Quillen
Quinn	Shaw	Tejeda
Radanovich	Shuster	Thomas
Rahall	Sisisky	Thornberry
Ramstad	Skeen	Tiahrt
Regula	Skelton	Traficant
Richardson	Smith (MI)	Upton
Riggs	Smith (NJ)	Visclosky
Roberts	Smith (TX)	Volkmer
Roemer	Smith (WA)	Vucanovich
Rogers	Solomon	Walker
Rohrabacher	Souder	Walsh
Ros-Lehtinen	Spence	Wamp
Roth	Spratt	Watts (OK)
Roukema	Stearns	Weldon (FL)
Royce	Stenholm	Weldon (PA)
Salmon	Stockman	Weller
Sanford	Stump	White
Saxton	Stupak	Whitfield
Scarborough	Talent	Wicker
Schaefer	Tanner	Williams
Schiff	Tate	Wolf
Seastrand	Tauzin	Young (AK)
Sensenbrenner	Taylor (MS)	Young (FL)
Shadegg	Taylor (NC)	Zeliff

NAYS—133

Abercrombie	Frank (MA)	Nadler
Ackerman	Franks (CT)	Olver
Andrews	Frelinghuysen	Owens
Becerra	Frost	Pallone
Beilenson	Gejdenson	Pastor
Bentsen	Gibbons	Payne (NJ)
Berman	Gilman	Pelosi
Bishop	Gonzalez	Pickett
Blumenauer	Green (TX)	Rangel
Boehlert	Greenwood	Reed
Boucher	Gutierrez	Rivers
Brown (CA)	Harman	Rose
Brown (FL)	Hastings (FL)	Roybal-Allard
Brown (OH)	Hilliard	Rush
Bryant (TX)	Hinchey	Sabo
Campbell	Horn	Sanders
Cardin	Hoyer	Sawyer
Chapman	Jackson (IL)	Schroeder
Clay	Jackson-Lee (TX)	Schumer
Clayton	Jefferson	Scott
Clyburn	Johnson (CT)	Serrano
Coleman	Johnson, E. B.	Shays
Collins (IL)	Kelly	Skaggs
Collins (MI)	Kennelly	Slaughter
Conyers	Lantos	Stark
Coyne	Levin	Stokes
Cummings	Lewis (GA)	Studds
DeFazio	Lofgren	Thompson
DeLauro	Lowey	Thurman
Dellums	Luther	Torkildsen
Deutsch	Maloney	Torres
Dixon	Markey	Torricelli
Doggett	Matsui	Towns
Dooley	McCarthy	Velazquez
Durbin	McDermott	Vento
Edwards	McKinney	Ward
Engel	Meehan	Waters
Evans	Meek	Watt (NC)
Farr	Menendez	Waxman
Fattah	Millender-McDonald	Wilson
Fazio	Miller (CA)	Wise
Filner	Mink	Woolsey
Flake	Morella	Wynn
Foglietta	Olver	Yates
Ford	Owens	Zimmer

NOT VOTING—12

Dicks	Ganske	Lincoln
Fields (LA)	Hayes	Longley
Fields (TX)	Heineman	Peterson (FL)
Furse	Johnston	Thornton

☐ 1236

The Clerk announced the following pair: On this vote:

Mr. Hayes for, with Ms. Furse against.

Mr. TORKILDSEN changed his vote from ''yea'' to ''nay.''

Ms. ESHOO and Mr. WILLIAMS changed their vote from ''nay'' to ''yea.''

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PARTIAL-BIRTH ABORTION BAN ACT OF 1995—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–198)

The SPEAKER pro tempore. (Mr. LAHOOD). The unfinished business is the further consideration of the veto message of the President of the United States on the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

The gentleman from Florida [Mr. CANADY] is recognized for 1 hour.

Mr. CANADY of Florida. Mr. Speaker, I yield the customary 30 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. CANADY of Florida. Mr. Speaker, I yield 3 minutes and 30 seconds to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Speaker, I have thought a lot about how to best convey what my thoughts are on this subject. I stand here today, not as a member of one party or another, not as somebody who readily admits that they are pro-life. I am. But I stand here today as a doctor.

Mr. Speaker, I have spent the last 18 years of my life, including a great deal of the time of the last 2 years while I have been in this Congress, caring for women who deliver babies. I have personally been involved in over 3,000 births that I have attended. I have seen every complication and every anomaly that has been mentioned in this debate on partial-birth abortion.

I am not standing here as somebody who is pro-life, I am not standing here as somebody that is a freshman Republican. I stand here today to make known to Members that they can vote against an override for only two reasons on this bill. One is that they are totally misinformed of the true medical facts, or that they are pro-abortion at any stage, for any reason. The facts will bear that out.

That is not meant to offend anybody. If somebody feels that way, they should stand up and speak that truth. But this procedure, this procedure is designed to aid and abet the abortionist. There is no truth to the fact that this procedure protects the lives of women. There is no truth to the fact that this procedure preserves fertility. There is no truth to the fact that this procedure in fact is used on complicated, anomalous conceptions. This procedure is used to terminate mid and late second trimester pregnancies at the elective request of women who so desire it.

This has nothing to do with women's emotional health. This has to do with termination of oftentimes viable children by a gruesome and heinous procedure.

What we should hear from those who are going to vote against overriding this is that they agree, that they agree that this procedure is an adequate and expected procedure that should be used, and that it is all right to terminate the life of a 26-week fetus that otherwise the physicians would be held liable under the courts in every State to not save its life, should it be born spontaneously.

So this debate is not about health of women. This debate is about whether or not true facts are going to be discussed in this Chamber on the basis of knowledge and sound science, rather than a political endpoint that sacrifices children in this country.

☐ 1245

Mr. Speaker, this vote is about untruth tied to emotion. We should be willing in our country if we are going to heal our country, if we are going to repair our country, to stand and speak honestly about what this procedure is. I have the experience. There is no one else in this body that has handled all these complications. This procedure never needs to be done again in this United States.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. COBURN. If I have time, I would be happy to yield.

Mr. CONYERS. Have you performed this procedure?

The SPEAKER pro tempore (Mr. LAHOOD). The time of the gentleman from Oklahoma has expired.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. Mr. Speaker, I rise in opposition to the bill and in support of the President's veto.

Mr. Speaker, I do not speak as a doctor. I speak as a woman with three beautiful grown children. And, Mr. Speaker, and my colleagues, let us be very clear that this debate is all about.

President Clinton stated very clearly that he would sign this bill if it contained a narrow exception to protect the lives and health of American women. The President does not believe that this procedure should be commonly available, he does not believe it should be available on demand, but that it must remain an option for women facing serious risk to life and death and health. In cases where a woman faces a serious health risk like kidney failure, cancer, or diabetes, the decision of how to proceed must be left to the women and the doctor, not this Congress.

So I say to my friends on the other side, let us sit down together, as we offered several times, and write a bill that we could all accept and that the President could sign. In fact, we went to the Republican leadership 3 times, asked to craft a narrow health exception to this bill. Three times we were refused. Why? Because this Republican Congress does not want to ban, it wants an issue, and that is so unfortunate. This is not about abortion. It is about politics, election-year politics, plain and simple.

Mr. Speaker, today's debate is a fitting way to end the most anti-choice Congress in history. This vote is the 52d taken in just the past 2 years to restrict the right to choose, a new record. Bob Dole and NEWT GINGRICH have spent the last 2 years trying to eliminate abortion rights completely, and American women know it.

Thankfully, President Clinton has used his veto pen to protect American women from the back alley. He has stood with American women by protecting the right to choose. He has stood with women like Claudia Ades and Coreen Costello who have had this procedure to save their lives and protect their health when they wanted pregnancy, they wanted a child, but this pregnancy went wrong. President Clinton recognizes that Congress has no place in the operating room during a crisis pregnancy.

The President, Mr. Speaker, will sign a bill if it contains a narrow exception to protect the lives and health of women like Claudia Ades and Coreen Costello. This is not too much to ask. I urge my colleagues to support the President's veto.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. BARCIA].

Mr. BARCIA. Mr. Speaker, I would like to take this opportunity to share an eloquent and touching letter that I received from a constituent who lives in my hometown of Bay City, MI. It reads:

> Daniel John was diagnosed very early as being far less than perfect, according to acclaimed scientific researchers. We were counseled to abort him as our life would be much easier; he would be a difficult child to raise. However, rather than terminating Daniel's life, we ''chose'' to let God do the choosing.
>
> After a very difficult pregnancy, Daniel was brought forth into this world alive. He was grossly disfigured, but he was beautiful. The pregnancy wasn't convenient, but he was worth the wait. According to some, he was expendable; to me, he was a priceless jewel.
>
> Daniel lived for about four hours before leaving us. What I have today is the precious memory of holding my living, breathing son for a few short moments until he died in my arms. He wasn't a burden, he wasn't a tragedy. He was a blessing, and I loved him.

Mr. Speaker, a baby does not have a voice. I ask my colleagues who voted against H.R. 1833 to carefully and closely reconsider their position. A baby, sick or healthy, should not be thought of as an inconvenience, but as a miracle. Please vote ''yes'' to override the veto of H.R. 1833.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the gentleman from

Michigan [Mr. CONYERS], the distinguished ranking member of our committee.

Mr. CONYERS. Mr. Speaker, I say to Mr. BARCIA, my dear colleague from Michigan, nobody, no doctor would have forced you to have the procedure that is being debated today. Nobody would have recommended it to you without allowing you and your wife to make the choice. So why not let everybody else have that same privilege—that same choice—that you had?

Why is it that we as Members of Congress, have now become doctors, Mr. CANADY? Who gave us the right, for the first time in American history, to determine what procedures doctors will employ? Where do you think that inures to you as a humble Member of Congress? What medical background do you bring to this debate that is greater than the knowledge of the members of the American College of Obstetricians and Gynecologists? By what right do you tell people they cannot have this often medically necessary procedure? If Mr. and Mrs. Barcia do not want to undergo the procedure, they don't have to do it. They can choose not to.

Now, let me turn to Dr. COBURN from Oklahoma. Dr. COBURN from Oklahoma, I am not totally misinformed. I am seeking information. I do not have a violent position on this. The fact that I am not supporting you, but instead am supporting most of the doctors in your profession, does not make me totally misinformed. Nor does it make me totally pro-abortion. Let us be fair, doctor.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington. Mr. Speaker, this afternoon the House will be debating a procedure called partial-birth abortion. I think we need to look at the words that are in this. Notice it said birth. This is the clue.

As a woman, I want you to understand that I would be put into labor, I would go through hours of labor, when the baby dropped and the little body started coming out, they would turn it first, take it out feet-first, which is absolutely damaging to a woman, and then right before the little head came through, they would puncture the head.

There are late-term abortions. I was actually pro-abortion for many years. I was never late-term abortion supporting. But even we that might have supported abortion and you that might support late-term abortion need to think about this. This is not for the woman. This is for the abortionist. There are other humane ways, if you believe in late-term abortion, for both the mother and the baby. But this tells us something clear, folks. We have gone a long way from abortion as a rare circumstances to abortion on demand. A long way.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Speaker, I rise in strong opposition to the motion to override the veto of the late-term medical abortion ban, and I urge my colleagues to vote to sustain this veto.

Today's vote is not about abortion. It is about voting to ban a medical procedure that can save the life of a mother. It is about voting to ban a medical procedure that would allow a mother to have children.

It is about voting against the medical procedure that Vikki Stella had to have to save her life, to see her children grow up and go to school and then to give birth to her son Nicholas.

Vikki wrote to me about the pain that she went through when she and her family discovered that her son was diagnosed with nine major anomalies, including a fluid-filled cranium with no brain tissue at all, compacted, flattened vertebrae, and skeletal dysplasia in the third trimester of her pregnancy. Her doctors told here that the baby would never live outside of her womb.

She wrote:

> My options were extremely limited because I am diabetic and don't heal as well as other people. Waiting for normal labor to occur, inducing labor early, or having a C-section would have put my life at risk. The only option that would ensure that my daughters would not grow up without their mother was a highly specialized, surgical abortion procedure developed for women with similar difficult conditions. Though we were distraught over losing our son, we knew the procedure was the right option . . . and, as promised, the surgery preserved my fertility. Our darling Nicholas was born in December of 1995.

This procedure that we seek to ban today is the procedure that saved Vikki's life and preserved here family. Vikki's situation was heart wrenching. But mothers and fathers need to be able to make medical decisions like that with their doctors, not with religious organizations and not with political organizations, and certainly, and most of all, not with the Congress.

The situation that these families are in is already difficult enough. Overriding this veto will only make it worse. I call on my colleagues, I plead with my colleagues, to vote no on the motion to override the veto.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, we have twice voted—by an overwhelming majority—to outlaw the partial birth abortion procedure. However, this procedure is still done on a daily basis in this country because the President ill-advisedly chose to veto this bill.

It makes me shudder to think that right now somewhere in this country there are little pre-born human beings in their mother's womb who are going to be subject to this brutal procedure.

I am only one of many who find this procedure horrifying. The American Medical Association's legislative council unanimously decided that this procedure was not a recognized medical technique and that this procedure is basically repulsive.

I have also received a multitude of postcards from my constituents in Nevada. They overwhelmingly object to this repugnant procedure, especially in light of the fact that 80 percent of these types of abortion are purely elective.

Regardless of whether you are prolife or pro-choice, it is obvious given the horrible nature of this type of abortion that it must be banned.

It is inhuman to begin the birthing process and nearly complete the delivery of the baby, only to suck the life out of the child.

What does it say about us as a nation when we allow our unborn children to be legally killed in this manner? It is imperative that this stop now.

I strongly urge my colleagues to override the veto of H.R. 1833, which would ban partial birth abortions.

☐ 1300

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. BECERRA], a distinguished member of the Committee on the Judiciary.

Mr. BECERRA. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I want to ask each and every Member who is somewhat in doubt to please vote to sustain the President's veto of H.R. 1833, and let me relate it to something very personal.

My legislative director, Deirdre Martinez, right now is at the hospital. She is at the hospital because she is being induced in her delivery of her baby. She is in good hands, and I know she is in good hands because my wife happens to be her ob-gyn.

My wife, as I have mentioned in the past, is an ob-gyn, and she is a high-risk specialist. She deals with the type of issues we are discussing on the floor right now.

Deirdre is fortunate. My wife says her baby seems to be perfectly normal, good weight, and probably will be born very healthy. There are, unfortunately, too many women sometimes in this country who do not have the good fortune of Deirdre, and it is in time of need that some of these women ask doctors to help them out.

There are late-term abortions that are performed that are not pretty because—by the way, no abortion is pretty; and no woman, I suspect, can stand up here and say they like to see what may happen to that pregnancy. But there are cases where a late-term abortion must be performed. We are not talking about a healthy 8- or 9-month-old baby being extracted from the womb; we are talking about a child that will never have a chance to see the light of day because, for whatever reason, it will never become a child within the womb.

Sometimes there is a need, for the woman's health, for the woman's safety and her life, to perform an abortion,

which we may not like. And as my wife has said, this is not a procedure that is done electively. A woman does not go into a hospital in her eighth month of pregnancy and ask that that fetus be extracted. No doctor in good conscience would do that. What we are talking about is preserving for this woman the opportunity to get past a very difficult situation.

Why we would want to ban that for this woman, I do not understand. How 435 Members who do not practice the profession nor live through that experience, how they can say that this is the best thing to legislate for the entire country, I do not understand, nor does my wife, and I suspect, nor does Deirdre, who I hope will have a healthy baby by today.

What I do understand is this: That we have politicized an issue because we have waited 6 months to take up the issue. If there was so much concern on the part of those who were for this bill to get this on the move so we would protect the lives of all these so-called unborn babies, why did we not try to overturn the President's veto right away?

It is unfortunate, because we know there is an election coming up and there is a point to be made. It is unfortunate because there are a lot of women who are suffering very traumatic times as a result of having these late-term abortions performed. And the saddest part about it is that we have decided to take this issue and politicize it, when it has become a very, very emotional and private issue for that woman.

I hope all those who have been able to watch this debate will learn something from this and take away that the experience is tough for them, but they should not have to worry about the politics of this particular procedure.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. BRYANT].

(Mr. BRYANT of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Tennessee. Mr. Speaker, my remarks are directed to the people who might be trying to decide right now whether to vote to override this veto or not. I strongly support the override of the veto.

This is not an issue of choice, of privacy, of not even medical necessity. This bill provides that we will abolish this very gruesome procedure, we have all seen pictures of it today, but it still allows the exception that if the mother's life is at issue and if there is no other procedure available, it can be done under those circumstances.

So this is not even an issue of medical necessity. This is an issue that says ''no'' to this type of terrible procedure.

We are a country, and we are debating this issue. I cannot believe we are standing here. We are a country that spends years of due process on convicted killers, murderers who commit the most heinous of crimes, and we would not dare think about executing those types of people by this gruesome procedure. Yet we are talking on this floor today about maintaining the legality of this type of terrible procedure when there are alternatives available.

I just cannot believe that. Is this an upside-down world or is it not?

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the gentlewoman from California [Ms. WATERS], a distinguished member of the Committee on the Judiciary.

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Mr. Speaker, today I rise in support of the President's veto of a misguided bill, H.R. 1833.

This bill would instruct doctors on medical procedures that politicians know little about. It would put women at risk who deserve the safest, most effective treatment available under any circumstance.

Let me share with you the words of Erica Fox from Los Angeles, a woman who was told that there was something ''seriously wrong'' with her fetus during her sixth month of pregnancy. The outcome at best was very, very poor.

When she got the news, she explains, ''I had my whole family with me, and at least 5 of them are M.D.'s. They had discussed everything with the doctors and they, too, felt there was no other option * * *.''

Her father, Dr. Walter E. Fox, shared these words.

As a doctor, I must say that it worries me greatly that those that represent me in Washington would think to take away my ability to care for my patients and their health to the best of my ability. And, as I see it, H.R. 1833 does just that.

He continues,

You are not doctors and most of you have not had a daughter or a sister or a wife or a patient who has been in this situation. But for those of us who find ourselves there, we need to have every medical advancement working for us, and the choice to use it.

''I feel that [my doctor] saved my life,'' said Erika Fox.

''And that my fetus was spared any pain * * *.

She continues,

My husband and I are now trying again. . . . There is hope that we will have a healthy baby sometime in the not to distant future. Hope is all you have left when your dreams are dashed the way ours were last October.

Don't override Clinton's veto of 1833,

She says:

Don't let the government take away our hope. . . .

I think Mrs. and Dr. Fox's words best explain why Congress must not outlaw a medical procedure. If this woman were your daughter, wife, sister—you would want as many medical options as possible, you would want the best doctor, and you would want her to be able to have children in the future. This bill would take away these options.

Let us leave this issue to people who know the facts. Let us support women, their safety, and their families. Doctors, women, and their families—not politicians—must make these decisions.

Oppose the veto override of H.R. 1833.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky [Mr. BUNNING].

(Mr. BUNNING of Kentucky asked and was given permission to revise and extend his remarks.)

Mr. BUNNING of Kentucky. Mr. Speaker, I rise in strong support of the override of the Presidential veto on H.R. 1833.

Mr. Speaker, late last year, the House of Representatives took a very moderate step toward eliminating one, specific and particularly horrible method of abortion—the partial birth abortion.

No one can reasonably justify this kind of abortion. It is grotesque. It is repulsive.

Unfortunately, the President of the United States has caved into the pressure of pro-abortion extremists and vetoed this ban of one, single, indefensible procedure. Hopefully, today, the House of Representatives, guided by the voice of moderation and common decency will see fit to override that veto.

There are those who try to argue that this procedure is necessary to protect the life of some mothers. That is not true. Former Surgeon General C. Everett Koop says that partial birth abortion is unnecessary and in no way protects a woman's life.

There are those who say that this procedure is necessary to prevent the birth of children plagued with defects and deformity. As a grandfather of a disabled child, I am outraged that this argument is used to defend such a heinous practice.

Only an extremist could justify or defend partial birth abortion. I urge my colleagues to support moderation and decency, support the ban on partial birth abortions and override the President's veto.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Speaker, I, of course, rise to urge the override of the very ill-advised veto of the ban on partial-birth abortions.

Back, oh, earlier in the year, one of the most widely respected and politically moderate physicians I suppose ever to hold the office of Surgeon General, Dr. C. Everett Koop, criticized this practice. And as recently as August of this year, Dr. Koop granted an interview to an American Medical Association publication on this issue.

He states quite simply that he believes, ''that the President was misled by his medical advisers on what is fact and what is fiction in reference to late-term abortion,'' going on to say that ''In no way can he twist his mind to see that this late-term abortion technique is a necessity for the mother, and certainly can't be a necessity for the baby.''

So I guess we are left to ask the question, why? Why would we even consider condoning a procedure like this when no medical necessity for it can actually be shown?

No acceptable answer can be given to this question because partial-birth

abortion is completely unacceptable, unnecessary, and a cruel procedure that should not be permitted in our policy. I urge the override.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. LARGENT].

Mr. LARGENT. Mr. Speaker, in this age of high technology and medical wonders, there still are many things that are a mystery to the human mind and an awesome reminder of the work of the Creator.

We see it when longtime rivals drop their weapons and come together as friends. We see it when those struggling against oppression and adversity succeed and claim the human dignity that is theirs as children of God. And most often we see the fingerprint of the Almighty and his glorious majesty when we look into the bright eyes of our newborn son or daughter.

It defies logic and the experience of human history then to think that that which grows inside of the womb is not a part of us, not human, and not alive. Whether by technological means, pharmaceutical means, or surgical means, it is outside of our moral and ethical prerogative to snuff out that which was sown by the Creator.

The unborn child is precisely that, an unborn child, and deserves the chance to grasps as much life as Divine Providence will allow. It is up to us as legislators to uphold our sacred duty to protect the lives of the innocent.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New York [Mrs. MALONEY].

Mrs. MALONEY. Mr. Speaker, today marks the 52d antichoice vote taken on the floor of Congress during the 104th Congress. As one of my colleagues in the new majority has said, ''We intend to repeal choice procedure by procedure.'' And they are doing it.

This is merely another effort to antagonize and terrorize young women like Becky Bruce of Ohio. At 22 weeks, doctors determined a lethal abnormality in her fetus. She and her husband decided to seek an abortion. Much like the abortion protesters who screamed and pointed at her, frightening her at the clinic, this legislation instills the same kind of fear.

This bill is an effort to chip away at the overall law of the land. Abortion is legal and safe. We cannot begin to make exceptions now. The antichoice supporters of this bill would love to start here, today, moving from their positions as lawmakers to become personal physicians. When women seek medical care, Congress has no place in their choices and no place in their tragedies. Apparently the supporters of this bill believe that it is more important to save a doomed fetus than to save the life and the health of its mother.

Had my colleagues in the majority allowed an amendment with an appropriate exception for the life or physical health of the mother, I would have supported this bill.

There have been many distortions put before Congress today. One is that this procedure is performed all the time. This procedure is performed rarely and only to save the life, health, and the ability to have children, of women. I urge a ''no'' vote.

□ 1315

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, I am very hesitant to speak on this issue. For one thing, I have been associated with the pro-choice side throughout my legislative career, and I do believe that when the issue of abortion is concerned, it really ought not be a legislative issue; it ought to be a personal decision determined by a woman with the advice of her physician, within the context of her religion and family. I do not believe that this issue falls within that rubric, within that context of decisionmaking.

I do agree with the Roe versus Wade decision which attempted to apply our human values, human judgment, to an issue on which none of us can ever be sure: at which point human life begins. And so we decided in Roe v. Wade, the Supreme Court decided that in the first 3 months, the woman should be fully free to exercise her judgment; and in the second trimester, the democratic process through State legislatures should apply restrictions; and in the third trimester, we should try to make it as difficult as possible.

What we are talking about now, though, goes beyond that third trimester. We are talking about the delivery of a fetus clearly in the shape and with the functions of a human being. And when that human being is delivered in the birth canal, it cannot be masked as anything but a human being.

We should not act in any legislative way that sanctions the termination of that life. And that is why I urge my colleagues to vote to override the President's veto of this legislation.

Mr. Speaker, I wish that the prochoice groups, when they saw this issue, would have simply agreed, said, ''You are right. We are not going to get involved in this because there are extremes on every one of these issues.'' This is an extreme that we ought not support.

Mr. CANADY of Florida. Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, could the chair please tell us what the time difference is?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Florida [Mr. CANADY] has 17 minutes remaining, and the gentlewoman from Colorado [Mrs. SCHROEDER] has 14 minutes remaining.

Mrs. SCHROEDER. Mr. Speaker, would the gentleman from Florida prefer to use more of his time so it is more even?

Mr. CANADY of Florida. Mr. Speaker, I would inform the gentlewoman that I only have about two or three remaining speakers, so I would reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from North Carolina [Mr. WATT], a member of the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentlewoman from Colorado for yielding time. I rise in support of sustaining the veto of the President on this bill.

Mr. Speaker there is a tendency on the part of some of my colleagues to try to divide folks into groups, based on their vote on this issue, of whether they support life or do not support life. I respectfully submit that no Member of this body supports death over life; that there are always difficult choices on a number of these votes.

But we heard evidence submitted at hearings in the Committee on the Judiciary that indicated and confirmed that serious medical jeopardy can result to women, and that in some cases this procedure is the only procedure that is available in late-term abortion to save the life of the mother, to preserve the ability of the mother to have children in the future, to protect the health of a prospective mother in those situations.

And when that occurs, to put the doctor and that mother in the position of saying, ''You will be a criminal if you exercise your right to protect yourself from serious health conditions, or to protect your reproductive capacity in the future, or protect even your life,'' I think is irresponsible.

This is not, as some folks would suggest, an easy decision. It is always a difficult decision. And the very people who are always talking about keeping the Government out of our personal lives it seems to me are the ones that are on the opposite side of this issue, because I do want the Government to leave some personal decisions to the individual American women and citizens of this country. And one of those decisions is when it is proper to save one's own life to, save the ability to have children in the future. That ought to be a personal decision made by the woman and her physician.

I want to make one final point that suggests, in the closing days of this Congress, that this is really not about this bill at all; it is really about politics.

The President vetoed this bill quite some time ago. It has been sitting over there in the Committee on the Judiciary, waiting. Well, what has it been waiting for? It could have come out in 2 days to have this vote. It could have come out in 2 weeks to have this vote. But it just sat there.

Mr. Speaker, when does it come out? Right before the election, so that somebody can inject the politics of the moment into a serious public policy discussion. This is about politics, my colleagues. It is about choice of a woman to protect her own health and

safety and her own life. It is about keeping the Government out of our own personal lives, and I think we ought to sustain the President's veto on this bill.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Speaker, we cast hundreds of votes in this body every year. Very rarely do we vote on an issue as important as this one.

I hope that my colleagues will do the right thing today and overwhelmingly vote to override the President's veto of the Partial-Birth Abortion Ban Act. We have debated this issue for quite some time now. We have listened to the experts, and Americans from all across this Nation, both prolife and prochoice, have spoken out against this particularly gruesome procedure. I have had people who are prochoice call my office and agree that there is no place for a procedure that is as barbaric, as gruesome as this in a civilized society.

Mr. Speaker, I cannot urge my colleagues in strong enough terms to do the right thing: Vote to override the President's veto.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Colorado [Mr. MCINNIS].

Mr. MCINNIS. Mr. Speaker, this is the most barbaric procedure I have ever come across. There is never, ever, ever a reason that makes this necessary.

The previous speaker says we are attempting to divide. We are attempting to protect.

This body today, Republicans and Democrats, will vote overwhelmingly to ban this procedure. Let me quote from the Wall Street Journal, Nancy Romer, today in an article, Partial-birth Abortion Is Bad Medicine:

> Consider the dangers inherent in partial-birth abortion, which usually occurs after the fifth month of pregnancy. A woman's cervix is forcibly dilated over several days, which risks creating an ''incompetent cervix,'' the leading cause of premature deliveries. It is also an invitation to infection, a major cause of infertility. The abortionist then reaches into the womb to pull the child feet first out of the mother, but leaves the head inside. Under normal circumstances, physicians avoid breech births whenever possible; in this case the doctor intentionally causes one—and risks tearing the uterus in the process.
>
> He then forces scissors through the base of the baby's scull, which remains lodged just within the birth canal. This is a partially ''blind'' procedure, done by feel, risking direct scissor injury to the uterus and laceration of the cervix or lower uterine segment, resulting in immediate and massive bleeding and the threat of shock or even death to the mother. None of this risk is ever necessary for any reason.

This is never, ever necessary, and I urge a ''yes'' vote to override the President's veto.

Mrs. SCHROEDER. The Speaker, I yield 2½ minutes to the distinguished gentlewoman from California [Ms. WOOLSEY].

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, this veto override is a cruel attempt to make a political point. Make no mistake about it, this debate, with all the emotional rhetoric and exaggerated testimony on the other side of the aisle, is a frontal attack on Roe versus Wade, plain and simple.

The Gingrich majority wants to do away with Roe, the radical right wants to do away with Roe, and H.R. 1833 is the first step. So let us be honest about what this veto override is really about.

This bill, which the President courageously vetoed, will outlaw a medical procedure which is rarely used but sometimes required in extreme and tragic cases when the life or the future fertility of the mother is in danger or when a fetus is so malformed that it has no chance of survival.

Like when the fetus has no brain or the fetus is missing organs. Or the spine has grown outside of the body. When the fetus has zero chance of life.

When women are forced to carry a malformed fetus to term, there is danger of chronic hemorrhaging, danger of permanent infertility or death.

Let me read a brief list of organizations that oppose H.R. 1833: The American College of Obstetricians and Gynecologists; the American Public Health Association; the American Nurses Association; the American Medical Women's Association. The list goes on and on.

These medical professionals oppose this bill because they know that H.R. 1833 will cost women their lives or their reproductive health.

Mr. Speaker, the Gingrich majority has proven time and again its resolve to make Roe versus Wade ring hollow for most American women. Do not let this happen. Protect women's lives and women's health. Protect a woman's right to decide with her doctor what is the best medical procedure during very tragic times. Vote ''no'' on the veto override. But if you cannot vote ''no,'' just vote ''present.''

Mrs. SCHROEDER. Mr. Speaker, we only have one remaining speaker, and I want to be sure the gentleman from Florida only has one remaining speaker, because they have double the time. Does the gentleman from Florida only have one remaining speaker?

Mr. CANADY of Florida. Mr. Speaker, I have one remaining speaker, as I indicated earlier. I reserve the balance of my time for closing.

Mrs. SCHROEDER. Mr. Speaker, I yield myself the balance of my time.

□ 1330

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 7½ minutes.

Mrs. SCHROEDER. Mr. Speaker, I must say in the time crunch, I felt terrible in having to cut off the distinguished gentlewoman from California who is a member of the committee. I really want her to stand up and finish what she was talking about. The gentlewoman from California [Ms. LOFGREN] was talking about her mother's best friend and her mother's best friend who was Catholic, going to church and being asked to organize on this issue.

I yield to the gentlewoman from California [Ms. LOFGREN] because I had to cut her off.

Ms. LOFGREN. Mr. Speaker, I did talk to the gentlewoman about my friends, the Wilsons, and the real truth, not the rhetoric, not the misinformation, and the comment is that good Catholics and good Christians do not want to hurt good mothers. If we could keep that in our minds, put aside the politics, I think we would do a far more decent job here today.

Mrs. SCHROEDER. Mr. Speaker, I wanted this body to hear what the gentlewoman said because that has been our position all along. We do not wish to hurt good mothers. That was the President's position. That is still our position.

I was the one who went to the Committee on Rules and went everywhere trying to get an amendment to deal with the serious health issues of a mother. Nobody wants this for vanity purposes. My skin crawls as I hear Members on this floor talking about thousands of women get these late term abortions for vanity purposes, like all women have such dark hearts they would wait to postviability and then suddenly decide, I changed my mind.

There may be some of those cases, I do not know. But I must tell you, all of us are willing to ban those cases. We are talking about the cases where women desperately want to have a family and something goes terribly wrong.

Many of my colleagues have heard about our friend here, have seen this picture before, but the real good news was after she had that procedure, look what she got. She got little Tucker. We really ought to say, this is what this is about, because this women was able to have this procedure late in her term in a very, very sad pregnancy that went very, very wrong. She was able to preserve her reproductive ability and go on to add to this happy American family.

Do we want the Congress of the United States saying no to that? I certainly do not. I certainly do not. I do not think we want the Congress of the United States standing in the same room with this woman and her husband and her doctor and probably her whole family in tears but the Congress says, but if your doctor tries to help you on this, after we pass this, he goes to jail. I do not think that is the American way.

If you really believe that women are running out and having these and this is a vanity issue and is about fitting into a prom dress or something, we are willing to do that. But you would not let us have the amendment. You would not let us have a serious health amendment. And every time we say health,

you say, you mean headaches. We were talking about serious health. You know how to write it; we know how to write it. Let us not kid ourselves. That is what the President said. The President said, serious health amendment.

I find this a very sad day because I really find this is not about whether or not there are thousands of these going on and how awful this is. I think this is all about politics. The President vetoed this bill in April. Let me tell you, in early April he vetoed this bill. It has being sitting in the committee and it could have come to the floor any day thereafter. So if you really thought that this was going on, this is an epidemic, women are losing their minds and running in in late term, if you thought that, you should have stopped it right away. If you thought this was so grisly and horrible, that is when you should have done it. But no, we decided to let it wait until election eve, where we could let it bubble and burn and all of this stuff. So that we could build a huge issue and this is our 52d vote on choice. This is really an attempt to undo choice, this extreme, extreme Congress that we have.

You see the charts that are drawn over there. They are drawn and they eat at your heart and they eat at my heart because they show a perfect, beautiful child, a perfect, beautiful child like Tucker. But let me tell you, the child that came before Tucker that would have prevented Tucker from being born, had there not been this procedure, did not look like Tucker and did not look like those pretty little drawings.

These are seriously deformed children that we are talking about, very seriously deformed, or the mother has a very serious condition.

Do you know what is wrong in this debate? We have been so caught up in this choice/anti-choice debate that we have made pregnancy sound like it is a 9-month cruise and that absolutely nothing can go wrong during that 9-month cruise and the only thing that would ever happen is if they do that, the mother must be some selfish, terrible person with a dark heart. But let me tell you, my colleagues, many things can go wrong.

Do you know by statistics today 25 percent of the vaginal and caesarean births in this country have serious maternal complications, 25 percent? Do you know if a woman has a baby over the age of 40, she is nine times more apt to die in this country. There are serious safe motherhood issues. We have had Members so engaged with their pictures and charts and screaming and playing politics with women's uteruses that we have not really dealt with the safe motherhood issue.

So I find this a very sad vote to end my career on. I thank the President of the United States, who listened to those families. Those families have been in this Congress pushing their strollers around with their babies and their husbands, trying to get Members of Congress to listen. Many of them are right-to-life families who never in the world thought they would ever need this procedure. Yet their world collapsed on them, and they did not want this to be like Russian roulette. This would be like pregnancy Russian roulette. You get one shot at it and, if it does not work, you have blown your chance forever to have a baby. Is that what this Congress is trying to say?

Let me read the words of Coreen Costello. She goes on to say:

I still do not believe in abortion. I have anguished over supporting an abortion procedure. However, I have chosen to come forward, despite my beliefs, because I believe that this bill does not protect women and families.

Coreen was the mother of Tucker. This is Coreen. She never thought she would be there.

Please do not make this happen to everybody before you realize it. Do not take this right away from America's families. And please, please, please, preserve serious health conditions of mothers.

In today's debate, the picture of the American woman that will emerge from the other side is that she is a frivolous and shallow person who would lightly terminate a late-term pregnancy. The supporters of this bill would have you believe that Congress must deprive women of the right to make their own reproductive decisions, because American women and their families cannot be trusted to be responsible decisionmakers.

I have this picture of Coreen Costello and her family beside me as I speak, because I don't want any one to forget that this debate is not about political sound bites or the politics of pitting Americans against each other. This debate is about real American families and the agonizing decisions they have to make when wanted pregnancies go terribly wrong, when serious fetal anomalies or serious threats to the woman's health arise during the pregnancy.

I came to Congress 24 years ago determined to make sure that the Federal Government treats women as responsible adults who are the best decisionmakers with respect to their reproductive health. The bill before us today says that your Member of Congress is somehow better able to make decisions about your reproductive health than you are. For Congress to usurp the power of the American family in this way is not only unconstitutional, it is also an affront to our fundamental commitment to the integrity of the family, and the right that Americans have to be able to make significant medical decisions for themselves.

You may hear, during the course of this debate, allegations that some women have obtained late-term abortions for reasons other than their life or health. Remember this: the individual States as well as the Federal Government, have the power, under the Constitution and Roe versus Wade, to ban all post-viability, late-term abortions except those that are necessary to preserve the woman's life or to avoid serious health consequences to her. The President has made it clear that he would sign such a bill. But every attempt we made to amend this bill to provide an exception for life or serious health consequences was flatly rejected by the other side. Not once did the majority permit this body to vote on an exception to preserve women's health or their future fertility. Not once.

The majority has chosen to have a political campaign issue instead of having a bill that would pass constitutional muster and ban late-term abortions except when the women's life or health is at stake.

I want to show you another picture of Coreen Costello and her family. Look closely, and note that since the time that we first debated this bill, the Costellos have had joyous occasion to sit for a new family picture, because their family has changed. Baby Tucker is the newest member of this family, and his birth was made possible because Coreen Costello and her family were able to use the procedure this bill bans. Let me close with Coreen Costello's own words. She wrote me yesterday and said this about her tragic pregnancy:

My daughter's stiff and rigid body as well as her unusual contorted position in my womb gave my team of doctors deep concern for my health and well-being * * *. With their knowledge and expertise and data from extensive diagnostic testing, my medical experts believed the safest option was an intact D&E, performed by specialist Dr. James McMahon. Reluctantly, my husband and I agreed.

She goes on to say:

I still do not believe in abortion, and I have anguished over supporting an abortion procedure. However, I have chosen to come forward, despite my beliefs, as H.R. 1833 does not protect women and families like mine. President Clinton and Members of Congress asked for an amendment to allow exceptions for serious health consequences. Proponents of this extreme bill refused to allow such a vote. They do not want to believe stories like mine. My baby girl is gone. Not because of an abortion procedure, but because of a terrible disease. Please do not confuse this. It was hard enough for my husband and children to lose Katherine. I thank God they did not lose me, too.

Not a day goes by that my heart doesn't ache for my daughter. Fortunately, my pain has been eased with the joyous birth of our healthy baby boy, Tucker. This would not have been possible without this procedure. It is time for my family to put the pieces of our lives back together. Please, please, give other women and their families this chance. Let us deal with our personal tragedies without any unnecessary interference from our government. Leave us with our God, our families, and our trusted medical experts. Sincerely, Coreen Costello.

Vote with these families. Vote against extremism that would make Congress the decisionmaker for your most intimate and difficult medical decisions. Vote no.

Mr. CARDIN. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Maryland.

(Mr. CARDIN asked and was given permission to revise and extend his remarks.).

Mr. CARDIN. Mr. Speaker, the issue presented by H.R. 1833, the partial birth abortion bill, is one that requires careful thought and consideration. The medical procedure that is addressed by this legislation is, in my judgment and in the judgment of hundreds of my constituents, gruesome. My vote today to sustain the President's veto in no way indicates my support for that procedure.

The fact is, however, that it is a medical procedure. With no medical training, I am not qualified, and I do not think this Congress is qualified, to rule on the necessity of specific medical decisions. This is a medical question, not a political one. If this bill were to become law, it would establish the precedent of Congress placing in our criminal statutes specific medical procedures. That would be a mistake.

It would a different matter to have a straightforward debate about the circumstances under which late-term abortions are medically justified. However, that is not what we're doing today. Instead, we are debating whether to outlaw a specific medical procedure.

I am dismayed that the American Medical Association, or other appropriate governing bodies of medical professionals, has not stepped forward on this issue. They have the expertise and the responsibility to rule on the necessity of this procedure, and I have urged them, in writing, to do so. I hope they will yet act to guide their members on whether this hideous procedure is, in fact, in some cases the only medically safe option to preserve the life and future health of the woman.

I have always defended the right of each woman to make her own decisions about her reproductive rights. The bill before us raises the question whether a particular medical procedure is ever appropriate for any woman. According to many doctors, there are horrific instances where this procedure is the best option for protecting the woman's life and/or health and her ability to have children in the future. I will vote against this bill because, for all the emotion of this issue, I do not believe Congress knows enough to tell doctors how to act in certain circumstances.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WELDON].

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise in strong support of the motion to override.

On March 27, this House passed the conference report on H.R. 1833, the ban on partial birth abortions and sent it to our President for his signature. Sticking to his proabortion agenda, the President chose to distance himself from the American people and veto the ban on the most brutal form of infanticide. Following the President's decision, we set out to override his veto and to protect the life of the unborn childn. We have come far and are in sight of our destination.

Today, with the bipartisan support of 285 Members of Congress, this House was able to successfully override the veto. Today, with the support of 285 Members of Congress, this House was able to respond to the millions of Americans who are outraged by this brutal form of abortion. Today, with the support of 285 Members of Congress, this House was able to send the message of the American people to a President who doesn't really seem to care what they think.

Those of us who believe in the life of the unborn, those of us who fight against the crime of partial birth abortion cheer today for our success, but regret the lives and futures that have been lost since the 27th of March, since the hour that we first passed the ban. Let us delay no more, let us be resolute, and let us complete our task in overriding President Clinton's unjust and unjustified veto, that no other child may perish.

We have advanced confidently in the direction of our hopes, and we await the Senate to join us in the completion of our task.

Mr. CANADY of Florida. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], chairman of the Committee on the Judiciary.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. HYDE] is recognized for 15 minutes.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I beg the indulgence of my colleagues not to ask me to yield because I cannot and will not and I would appreciate their courtesy. I also want to say briefly that those who have charge us with politics, invidious politics, for delaying this debate ought to understand that Americans cannot believe this practice exists and it has taken months to educate the American people and it will take many more months to educate them as to the nature and extent of this horrible practice. That is one reason it has taken so long.

The law exists to protect the weak from the strong. That is why we are here.

Mr. Speaker, in his classic novel ''Crime and Punishment,'' Dostoyevsky has his murderous protagonist Raskolnikov complain that ''Man can get used to anything, the beast!''

That we are even debating this issue, that we have to argue about the legality of an abortionist plunging a pair of scissors into the back of the tiny neck of a little child whose trunk, arms and legs have already been delivered, and then suctioning out his brains only confirms Dostoyevsky's harsh truth.

We were told in committee by an attending nurse that the little arms and legs stop flailing and suddenly stiffen as the scissors is plunged in. People who say ''I feel your pain'' are not referring to that little infant.

What kind of people have we become that this procedure is even a matter for debate? Can we not draw the line at torture, and baby torture at that? If we cannot, what has become of us? We are all incensed about ethnic cleansing. What about infant cleansing? There is no argument here about when human life begins. The child who is destroyed is unmistakably alive, unmistakably human and unmistakably brutally destroyed.

The justification for abortion has always been the claim that a women can do with her own body what she will. If you still believe that this four-fifths delivered little baby is a part of the woman's body, then I am afraid your ignorance is invincible.

I finally figured out why supporters of abortion on demand fight this infacticide ban tooth and claw, because for the first time since Roe v. Wade the focus is on the baby, not the mother, not the woman but the baby, and the harm that abortion inflicts on an unborn child, or in this instance a four-fifths born child. That child whom the advocates of abortion on demand have done everything in their power to make us ignore, to dehumznize, is as much a bearer of human rights as any Member of this House. To deny those rights is more than the betrayal of a powerless individual. It betrays the central promise of America, that there is, in this land, justice for all.

The supporters of abortion on demand have exercised an amazing capacity for self-deception by detaching themselves from any sympathy whatsoever for the unborn child, and in doing so they separate themselves from the instinct for justice that gave birth to this country.

The President, reacting angrily to this challenge to his veto, claims not to understand why the morality of those who support a ban on partial birth abortions is superior to the morality of ''compassion'' that he insists informed his decision to reject Congress' ban on what Senator MOYNIHAN has said is ''too close to infanticide.''

Let me explain, Mr. President. There is no moral nor, for that matter, medical justification for this barbaric assault on a partially born infant. Dr. Pamela Smith, director of medical education in the Department of Obstetrics and Gynecology at Chicago's Mount Sinai Hospital, testified to that, as have many other doctors.

Dr. C. Everett Koop, the last credible Surgeon General we had, was interviewed by the American Medical Association on August 19, and he was asked:

Question: ''President Clinton just vetoed a bill on partial birth abortions. In so doing, he cited several cases in which women were told these procedures were necessary to preserve their health and their ability to have future pregnancies. How would you characterize the claims being made in favor of the medical need for this procedure?''

Answer: Quoting Dr. Koop, ''I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late term abortions.''

Question: ''In your practice as a pediatric surgeon, have you ever treated children with any of the disabilities cited in this debate? Have you operated on children born with organs outside of their bodies?''

Answer: ''Oh, yes, indeed. I've done that many times. The prognosis usually is good. There are two common ways that children are born with organs outside of their body. One is an omphalocele, where the organs are out but still contained in the sac composed of the tissues of the umbilical cord. I have been repairing those since 1946. The other is when the sac has ruptured. That makes it a little more difficult. I don't know what the national mortality would be, but certainly more than half of those babies survive after surgery.

''Now every once in a while, you have other peculiar things, such as the chest being wide open and the heart being outside the body. And I have even replaced hearts back in the body and had children grow to adulthood.''

□ 1345

Question: And live normal lives?

Answer: Living normal lives. In fact, the first child I ever did with a huge omphalocele much bigger than her head went on to develop well and become the head nurse in my intensive care unit many years later.''

The abortionist who is a principal perpetrator of these atrocities, Dr. Martin Haskell, has conceded that at least 80 percent of the partial-birth abortions he performs are entirely elective; 80 percent are elective. And he admits to over a thousands of these abortions, and that is some years ago.

We are told about some extreme cases of malformed babies as though life is only for the privileged, the planned and the perfect. Dr. James McMahon, the late Dr. James McMahon, listed nine such abortions he performed because the baby had a cleft lip.

Many other physicians who care both about the mother and the unborn child have made it clear this is never a medical necessity, but it is a convenience for the abortionist. It is a convenience for those who choose to abort late in pregnancy when it becomes difficult to dismember the unborn child in the womb.

Well, the President claims he wants to solve a problem by adding a health exception to the partial-birth abortion ban. That is spurious, as anyone who has spent 10 minutes studying the Federal law, understands. Health exceptions are so broadly construed by the court, as to make any ban utterly meaningless.

If there is no consistent commitment that has survived the twists and the turns in policy during this administration, it is an unshakable commitment to a legal regime of abortion on demand. Nothing is or will be done to make abortion rare. No legislative or regulatory act will be allowed to impede the most permissive abortion license in the democratic world.

The President would do us all a favor and make a modest contribution to the health of our democratic process if he would simply concede this obvious fact.

In his memoirs Dwight Eisenhower wrote about the loss of 1.2 million lives in World War II, and he said:

''The loss of lives that might have otherwise been creatively lived scars the mind of the civilized world.''

Mr. Speaker, our souls have been scarred by one and a half million abortions every year in this country. Our souls have so much scar tissue there is not room for any more.

And say, what do we mean by human dignity if we subject innocent children to brutal execution when they are almost born? We all hope and pray for death with dignity. Tell me what is dignified about a death caused by having a scissors stabbed into your neck so your brains can be sucked out.

We have had long and bitter debates in this House about assault weapons. Those scissors and that suction machine are assault weapons worse than any AK–47. One might miss with an AK–47; the doctor never misses with his assault weapon, I can assure my colleagues.

It is not just the babies that are dying for the lethal sin of being unwanted or being handicapped or malformed. We are dying, and not from the darkness, but from the cold, the coldness of self-brutalization that chills our sensibilities, deadens our conscience and allows us to think of this unspeakable act as an act of compassion.

If my colleagues vote to uphold this veto, if they vote to maintain the legality of a procedure that is revolting even to the most hardened heart, then please do not ever use the word compassion again.

A word about anesthesia. Advocates of partial-birth abortions tried to tell us the baby does not feel pain; the mother's anesthesia is transmitted to the baby. We took testimony from five of the country's top anesthesiologists, and they said it is impossible, that result will take so much anesthesia it would kill the mother.

By upholding this tragic veto, those colleagues join the network of complicity in supporting what is essentially a crime against humanity, for that little, almost born infant struggling to live is a member of the human family, and partial-birth abortion is a lethal assault against the very idea of human rights and destroys, along with a defenseless little baby, the moral foundation of our democracy because democracy is not, after all, a mere process. It assigns fundamental rights and values to each human being, the first of which is the inalienable right to life.

One of the great errors of modern politics is our foolish attempt to separate our private consciences from our public acts, and it cannot be done. At the end of the 20th century, is the crowning achievement of our democracy to treat the weak, the powerless, the unwanted as things? To be disposed of? If so, we have not elevated justice; we have disgraced it.

This is not a debate about sectarian religious doctrine nor about policy options. This is a debate about our understanding of human dignity, what does it mean to be human? Our moment in history is marked by a mortal conflict between culture of death and a culture of life, and today, here and now, we must choose sides.

I am not the least embarrassed to say that I believe one day each of us will be called upon to render an account for what we have done, and maybe more importantly, what we fail to do in our lifetime, and while I believe in a merciful God, I believe in a just God, and I would be terrified at the thought of having to explain at the final judgment why I stood unmoved while Herod's slaughter of the innocents was being reenacted here in my own country.

This debate has been about an unspeakable horror. While the details are graphic and grisly, it has been helpful for all of us to recognize the full brutality of what goes on in America's abortuaries day in and day out, week after week, year after year. We are not talking about abstractions here. We are talking about life and death at their most elemental, and we ought to face the truth of what we oppose or support stripped of all euphemisms, and the queen of all euphemisms is ''choice'' as though one is choosing vanilla and chocolate instead of a dead baby or a live baby.

Now, we have talked so much about the grotesque; permit me a word about beauty. We all have our own images of the beautiful; the face of a loved one, a dawn, a sunset, the evening star. I believe nothing in this world of wonders is more beautiful than the innocence of a child.

Do my colleagues know what a child is? She is an opportunity for love, and a handicapped child is an even greater opportunity for love.

Mr. Speaker, we risk our souls, we risk our humanity when we trifle with that innocence or demean it or brutalize it. We need more caring and less killing.

Let the innocence of the unborn have the last word in this debate. Let their innocence appeal to what President Lincoln called the better angels of our nature. Let our votes prove Raskolnikov is wrong. There is something we will never get use to. Make it clear once again there is justice for all, even for the tiniest, most defenseless in this, our land.

Mr. BISHOP. Mr. Speaker, I rise today to sustain President Bill Clinton's veto of H.R. 1833, the Partial Birth Abortion Ban Act of 1995. The bill makes it a crime to perform a so-called partial-birth abortion unless the abortion is necessary to save the life of the mother. Under the legislation, physicians who perform these abortions are subject to a maximum of 2 years imprisonment, fines, or both. The bill also establishes a civil cause of action for damages against the doctor who performs the procedure.

I am against abortion as a method of birth control and certainly against elective late-term abortions except where necessary to protect the life or health of the mother. Today, I vote to sustain the President's veto because H.R. 1833 would seriously infringe upon a family's right to choose what is best for them. In addition, it would seriously interfere with a physician's attempt to protect a woman's health or future reproductive capacity.

This rare procedure is primarily used in cases of desired pregnancies gone tragically wrong; when a family learns late in pregnancy of severe fetal anomalies or of a medical condition that threatens the woman's life or health. The American Public Health Association, the American Medical Women's Association, and the American College of Obstetricians and Gynecologists, all organizations

dedicated to improving women's health care, oppose the measure. According to the American College of Obstetricians and Gynecologists, this type of procedure is ''done primarily when the abnormalities of the fetus are so extreme that the independent life is not possible or when the fetus has died in utero.'' They further explain that the medical problems which a woman could develop that might require interruption of pregnancy during the third trimester include rare maternal problems that could threaten the life and/or health of the pregnant woman if the pregnancy continued such as severe heart disease, malignancies, kidney failure, or severe toxemia.

I simply cannot tell a mother that she must risk her life carrying a fetus that the medical community has determined would not live. That should be a family decision best left to the family and their God. In these situations, in which a family must make such a difficult decision, the ability to choose this procedure must be protected.

This measure outlaws a valid medical procedure. Other methods of late-term abortion may be more dangerous to the health or life of the woman. Moreover, it compromises the patient-physician relationship. Because it bans one of the safest, least invasive methods available later in pregnancy, physicians would be compelled to balance the health of their patients against the possibility of facing Federal criminal charges.

In short, I cannot vote to override the President's veto because it fails to protect women and families in such dire circumstances and because it treats doctors who perform the procedures as criminals. The life exception in the bill only covers cases in which the doctor believes that the woman will die. It fails to cover cases where, absent the procedure, serious physical harm is very likely to occur. I would support H.R. 1833 if it were amended to add an exception for serious health consequences.

I urge my colleagues to vote to sustain the President's veto.

Mrs. KELLY. Mr. Speaker, I rise in reluctant opposition to the veto override of H.R. 1833.

I am opposed to late-term abortions except in instances where they are necessary to save the life of the mother or for serious, very limited health reasons. Unfortunately, this well-intentioned legislation fails to make these exceptions. Tragedies involving severely deformed or dying fetuses sometimes occur in the late stages of pregnancy. In these crisis situations, women should have access to the safest medical procedure available, and on some occasions the safest such procedure is the intact dilation and evacuation procedure.

If we ban this procedure, Mr. Speaker, as this legislation seeks to do, doctors will resort to other procedures, such as a caesarean section or a dismemberment dilation and evacuation, which can and often do pose greater health risks to women, such as severe hemorrhaging, lacerations of the uterus, or other complications that can threaten a woman's life or her ability to have children again in the future.

Mr. Speaker, passage of H.R. 1833 will not end late-term abortions; the bill only bans one such procedure that, in the judgment of a doctor, might offer the surest way of protecting the mother. The New York chapter of the American College of Obstetricians and Gynecologists opposes H.R. 1833, expressing concern that ''* * * Congress would take any action that would supersede the medical judgment of trained physicians and would criminalize medical procedures that may be necessary to save the life of a woman * * *''.

If H.R. 1833 were amended to include exceptions for situations where a woman's life or health is threatened, ensuring that decisions regarding the well-being of the mother are made by doctors, not politicians, I would gladly support the bill. Without this protection, however, I cannot in good conscience support this legislation today.

Good people will always disagree over the abortion issue, and I respect the passion and depth of feeling that so many of my constituents on both sides of this issue have expressed to me. Maintaining policies which promote healthy mothers and healthy babies should remain above the political fray, and it is for this reason that I oppose the veto override today.

Mr. BLUMENAUER. Mr. Speaker, I oppose the challenge to the President's veto of H.R. 1833. Whatever one's belief on abortion, the late-term procedure most be viewed separately, for this is a procedure to be used only as a last resort to save a woman's life or to avoid a devastating deterioration of her health. Late-term abortion is not about choice. It is about saving women from grave damage to their health, to their ability to bear children in the future, and from death. The President, and the medical community, have assured us that abuses of this procedure can be avoided. Regrettably, those voting to override this veto would apparently prefer to score political points than to heed those assurances. This is being done with indifference to women who face grave circumstances, and in disregard to the potential of this institution to render a serious policy determination on a matter of grave consequence.

Mr. FAZIO of California. I rise today to express my support for the President's position on H.R. 1833 and to urge my colleagues to support it.

This issue has been an incredibly difficult one for me as I'm sure it has been for most of my colleagues. The medical procedures involved are very disturbing, and moreover, intensely personal issues lie at the heart of this debate.

However, I opposed H.R. 1833 for several reasons when we debated this legislation earlier this year, and I remain opposed to this bill.

First, and most important, H.R. 1833 denies women the right to make extremely important and personal medical decisions. If passed, this bill would strip away many of the protections that exist for legal abortion.

Only the mother, in consultation with her doctor, should make the decision. We should not attempt to impose a ''Congress Knows Best'' medical solution on the women of America.

In additional, I opposed this bill because it doesn't contain an exception which would allow for this extremely rare procedure to be performed when circumstances are the most dire; that is, when the life of the mother is endangered. We should not accept a ban on a procedure which may represent the best hope for a woman to avoid serious risks to her health.

Of course we should not make this procedure, or any type of abortion, a purely elective procedure. But if we pass this bill, we are criminalizing a medical procedure that may one day be necessary to save the life of the mother and allow her to have a family.

I urge all of my colleagues to give careful thought to their vote today and oppose the veto override attempt before us.

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in opposition to the motion to override the Presidential veto of H.R. 1833, the late-term abortion ban. The fact that we are voting on this motion today is a true testament to how extreme many of the Members of this House of Representatives are. Despite their campaign pledges to ''get the U.S. government out of your life,'' Gingrich-Dole Republican Members have continued to advocate that the U.S. Congress take unprecedented steps into the personal lives of American women and their families—as well as into their doctor's offices—in order to influence public opinion and undermine current laws in a fashion that they cannot do through the highest court in our land. H.R. 1833 is an attempt by Gingrich extremists to prescribe their own view of proper medical strategy regarding partial birth abortion procedures.

In order to promote this bill, the Republicans have focused on certain aspects of this medical procedure that are intended to elicit emotional responses. What they refuse to focus on, however, is that the only women who seek such rare, third-trimester abortions are overwhelmingly in tragic, heart-rendering situations in which they must make one of the most difficult decisions of their lives.

Often they are faced with personal health risks that threaten their very lives and/or their ability to have children in the future. Others discover very late in their pregnancy—in some cases even after they already know the sex of the child, have picked out a name and gotten the baby's crib—that their child has horrific fetal anomalies that are incompatible with life and will cause the baby terrible pain and tragedy before the end of its short life.

Clearly, each of these situations is serious, tragic, and terribly difficult for the families involved. The decision to seek a late-term, partial-birth abortion is one that is not made carelessly or lightly. The U.S. Congress is the last entity that should be intruding into this type of personal, family decision.

Further, we in Congress have absolutely no right to interfere with a doctor's medical judgment when he or she is making critical decisions affecting the life of a woman, her health and her ability to bear children in the future. It is extremely important to note that this bill makes no exception for the health of the mother. In fact, it makes no mention of the health of the women whatsoever. Clearly, the mother's health and her reproductive future mean nothing to those Members of this body who are pushing this bill forward and who have failed to include this vital exception.

H.R. 1833 takes advantage of tragic circumstances and sacrifices the health and maybe lives of women in order to push an extremist agenda forward during this election year. I urge my colleagues to stay fast in their beliefs for individual rights and to continue to allow a woman's right to her own reproductive choices and not to be dictated to by partisan political action by mean spirited office seekers. I support the President's veto of this bill and will vote to sustain it.

Mr. CUNNINGHAM. Mr. Speaker, I rise today in support of overriding President Clinton's unwise veto of H.R. 1833, the Partial Birth Abortion Ban Act.

Last March, I joined 285 of my House colleagues in support of banning the procedure known as partial-birth abortion. The measure was supported by members like me who are pro-life, and even by many who consider themselves pro-choice. We shared our justification: As New York Senator DANIEL PATRICK MOYNAHAN said, the partial birth abortion procedure is just ''too close to infantacide.'' And I agree.

Yet, after H.R. 1833 was adopted by bipartisan majorities in the House and Senate, President Clinton vetoed the Partial Birth Abortion Ban Act on April 10. The President's veto represents a truly mean and extreme position. His position is that the absolute, most extreme abortion procedure, no matter how barbaric, should continue to be permitted in America. This procedure is such that even a brief description of it causes strong men and women to wince.

Since the President's veto, more than 7,500 of my constituents have written or called me, urging me to support an override of the President's veto. But he did veto it. And on July 15, I wrote House Majority Leader DICK ARMEY, urging the House to fulfill its responsibility to a vote to override President Clinton's veto.

Today we will have that vote. And today I will vote to override the President's decision, which drawn the deep disappointment of pro-life and pro-choice Americans alike. This is a sad day, because one would hope that the President had not vetoed such commonsense, humane legislation in the first place.

Mrs. CHENOWETH. Mr. Speaker, when President Clinton vetoed H.R. 1833, the Partial-Birth Abortion Act, he claimed he was trying to protect women's health.

The President was distorting the truth.

Medical facts show the President's claim to be completely false.

Mr. Speaker, partial-birth abortion is not a legitimate medical procedure and is not needed for any particular circumstance. Doctors at the Metropolitan Medical Clinic in New Jersey say that only a ''minuscule amount'' of the 1,500 partial-birth abortions they perform are for medical reasons. One doctor is quoted as saying, ''Most [partial-birth abortion patients] are Medicaid patients * * * and most are for elective, not medical, reasons; most who did not realize, or didn't care, how far along they were.''

This procedure is used on babies who are four and a half months in the womb or older. It can be employed up until the ninth and final month of pregnancy. The ninth and final month, Mr. Speaker.

Opposition to this technique isn't merely the opinion of a handful of doctors. The American Medical Association has made its position clear.

The AMA's Council on Legislation voted unanimously to recommend that the AMA board of trustees endorse H.R. 1833. One member of AMA's legislative council said that, ''partial birth abortion is not a recognized medical technique,'' and many AMA members agreed that, ''the procedure is basically repulsive.''

Mr. Speaker, my position on abortion has been clear and consistent. I oppose it, except in certain very specific cases.

But I do not understand how people can support this procedure. Abortion advocates will argue that a fetus in the early stages of pregnancy is not human life. I disagree with that. But surely even people who make that argument must understand in their hearts that a pre-born baby in the third trimester of pregnancy is in fact human life. And that human life deserves the protection of law.

The position of those who favor partial birth abortions rests on the absurd notion that if one does not have to look at the baby then one can somehow deny that the baby is alive.

Mr. Speaker, not only is the procedure itself medieval, but so is the logic of those who advocate and apologize for it.

Permitting this ghastly procedure to continue debases the whole medical profession, it debases our system of law, and indeed it debases our very notion of the concept of life.

Our system of laws, our American heritage, is based on the idea that people have certain God-given rights. Those rights are life, liberty, and the pursuit of happiness.

Those rights existed before laws were established. In fact, it is because those rights existed that laws were established in order to protect those rights.

First and foremost among those rights is the right to life.

As lawmakers we have a responsibility to protect the lives of our citizens, in this case, the very youngest, most vulnerable of American citizens.

I urge my colleagues to do the right thing.

I urge my colleagues to stand against this hideous, repugnant practice.

Let us stand up for a good principle and let us override the President's veto.

Mr. HASTERT. Mr. Speaker, I rise in support of this attempt to override President Clinton's veto of the partial birth abortion bill and I hope my colleagues will join me in this effort.

Mr. Speaker, I have listened with some care to the comments by my distinguished colleague from Colorado, Mrs. SCHROEDER, who is leading the effort to preserve this procedure. And I am reminded of some advice that the gentlelady from Colorado gave this House just a day or two ago when we were debating a bill to make Mother Teresa an honorary citizen of the United States. The gentlelady from Colorado, at that time said we could honor Mother Teresa best if, every day, as we considered how to vote on legislation brought to this floor, we reflected upon Mother Teresa's compassion, and her courageous stand for children and the helpless.

As the gentlelady from Colorado knows, I do not always agree with her advice. But on this occasion I think the gentlelady from Colorado's advice the other day does apply to our deliberation today. I think we should let the wisdom of Mother Teresa inform our hearts and our minds. And I think it is quite clear what that gentle woman from Calcutta, India, would say if she were here today—it is the same thing she has said so often—that the taking of innocent human life is wrong.

Mr. Speaker, I urge my colleagues to vote to end partial birth abortion in this country. Override the President's veto.

Mr. LEVIN. Mr. Speaker, I do not favor late-term abortions and believe they should only be allowed in cases where the life or health of the mother is threatened.

I voted to sustain the President's veto because the bill does not allow a physician to take into account even serious threats to a woman's health, as the Supreme Court has required.

I would have voted for H.R. 1833 if there had been an exception to allow their procedure where there is medical evidence that the health of the mother is indeed threatened.

Mr. BENTSEN. Mr. Speaker, today we are considering an override of the President's veto of H.R. 1833, the late-term abortion bill. I oppose the override because this legislation is fundamentally flawed and would put at risk the life, health, and fertility of women facing one of the most difficult, anguished, and personal decisions imaginable.

First, let me say that I oppose late-term abortions except, as the U.S. Supreme Court requires, when necessary to protect the life or health of a woman. H.R. 1833 falls woefully short of meeting this critical standard.

H.R. 1833 provides only a partial exception to protect the life of a woman, and even this partial exception may be invoked only under a very narrow set of circumstances. In other words, this legislation takes away the authority of a physician to select the best medical procedure for saving a woman's life.

Furthermore, this legislation includes no exception whatsoever when a woman faces a severe threat to her health or her ability to have children in the future.

I would support this legislation if its proponents would allow an amendment to reflect not only the Supreme Court's rulings, but State law in Texas. In Texas, late-term abortions are banned except when the woman's life or health is threatened. That is the approach this legislation should take as well.

While I am troubled by the procedure H.R. 1833 seeks to outlaw, I believe it is dangerous and wrong to ban a medical procedure that in some circumstances represents the best hope for a woman to avoid serious risk to her health. The procedure that H.R. 1833 would ban is utilized in the most emotionally wrenching circumstances imaginable—involving cases in which the fetus has developed severe abnormalities that will not allow it to sustain life outside the womb and in which a woman's life, health, and future fertility are jeopardized.

There is no simple solution to reducing the incidence of abortion. However, this Congress could have fashioned a commonsense bill limiting the use of this procedure to cases in which a woman and her doctor decide it is the best way to protect her life and health. Instead, the proponents of H.R. 1833 have chosen to exploit the anguish of families confronting this decision for political gain. How sad and how wrong.

Mrs. SMITH of Washington. Mr. Speaker, I submit for the RECORD the following:

STATEMENT OF DAVID J. BIRNBACH, M.D.

Mr. Chairman, Members of the Subcommittee, my name is David Birnbach, M.D. and I am presently the Director of Obstetric Anesthesiology at St. Luke's-Roosevelt Hospital Center, a teaching hospital of Columbia University College of Physicians and Surgeons in New York City. I am also president-elect of the Society for Obstetric Anesthesia and Perinatology, the society which represents my subspecialty.

I am here today to take issue with the previous testimony before committees of the Congress that suggests that anesthesia causes fetal demise. I believe that I am qualified to address this issue because I am a practicing obstetric anesthesiologist. Since completing my anesthesiology and obstetric anesthesiology training at Harvard University, I have administered analgesia to more than five thousand women in labor and anesthesia to over a thousand women undergoing

cesarean section. Although the majority of these cases were at full term gestation, I have provided anesthesia to approximately 200 patients who were carrying fetuses of less than 30 weeks gestation and who needed emergency non-obstetric surgery during pregnancy. These operations have included appendectomies, gall bladder surgeries, numerous orthopedic procedures such as fractured ankles, uterine and ovarian procedures (including malignant tumor removal), breast surgery, neurosurgery, and cardiac surgery.

The anesthetics which I have administered have included general, epidural, spinal and local. The patients have included healthy as well as very sick pregnant patients. Although I often use spinal and epidural anesthesia in pregnant patients, I also administer general anesthesia to these patients and, on occasion, have needed to administer huge doses of general anesthesia in order to allow surgeons to perform cardiac surgery or neurosurgery.

In addition, I believe that I am also especially qualified to discuss the effect of maternally-administered anesthesia on the fetus, because I am one of only a handful of anesthesiologists who has administered anesthesia to a pregnant patient undergoing in-utero fetal surgery, thus allowing me to watch the fetus as I administered general anesthesia to the mother. A review of the experiences that my associates and I had while administering general anesthesia to a mother while a surgeon operated on her unborn fetus was published in the Journal of Clinical Anesthesia, vol. 1, 1989, pp. 363–367. In this paper, we suggested that general anesthesia provides several advantages to the fetus who will undergo surgery and then be replaced in the womb to continue to grow until mature enough to be delivered. Safe doses of anesthesia to the mother most certainly did not cause fetal demise when used for these operations.

Despite my extensive experience with providing anesthesia to the pregnant patient, I have never witnessed a case of fetal demise that could be attributed to an anesthetic. Although some drugs which we administer to the mother may cross the placenta and affect the fetus, in my medical judgment fetal demise is definitely not a consequence of a properly administered anesthetic. In order to cause fetal demise it would be necessary to give the mother dangerous and life-threatening doses of anesthetics. This is not the way we practice anesthesiology in the United States.

Mr. Chairman, I am deeply concerned that the previous congressional testimony and the widespread publicity that has been given this issue will cause unnecessary fear and anxiety in pregnant patients and may cause some to unnecessarily delay emergency surgery. As an example, several newspapers across the U.S. have stated that anesthesia causes fetal demise. Because this issue has been allowed to become a ''controversy'' several of my patients have recently expressed concerns about anesthesia, having seen newspaper or heard radio or television coverage of this issue. Evidence that patients are still receiving misinformation regarding the fetal effects of maternally administered anesthesia can be seen by review of an article that a pregnant patient recently brought with her to the labor and delivery floor. In last month's edition of Marie Claire, a magazine which many of my pregnant patients read, an article about partial birth abortion states: ''The mother is put under general anesthetic, which reaches the fetus through her bloodstream. By the time the cervix is sufficiently dilated, the fetus has overdosed on the anesthesia and is brain-dead.'' These incorrect statements continue to find their way into newspapers and magazines around the country. Despite the previous testimony of Dr. Ellison, I have yet to see an article that states, in no uncertain terms, that anesthesia when used properly does not harm the fetus. This supposed controversy regarding the effects of anesthesia on the fetus must be finally and definitively put to rest.

In order to address this complex issue, I believe that it is necessary to comment on three of the statements which have recently been made to the Congress.

(1) Dr. James McMahon, now deceased, testified that anesthesia causes neurologic fetal demise.

(2) Dr. Lewis Koplick supported Dr. McMahon and stated: ''I am certain that anyone who would call Dr. McMahon a liar is speaking from ignorance of abortions in later pregnancy and of Dr. McMahon's technique and integrity.''

(3) Dr. Mary Campbell of Planned Parenthood has addressed this issue by writing the following: ''Though these doses are high, the incremental administration of the drugs minimizes the probability of negative outcomes for the mother. In the fetus, these dosage levels may lead to fetal demise (death) in a fetus weakened by its own developmental anomalies.''

My responses to these statements are as follows:

1. There is *absolutely* no scientific or clinical evidence that a properly administered maternal anesthetic causes fetal demise. To the contrary, there are hundreds of scientific articles which demonstrate the fetal safety of currently used anesthetics.

2. Dr. Koplick has stated that the ''massive'' doses used by Dr. McMahon are responsible for fetal demise. *This again, is incorrect and there is no scientific or clinical data to support this allegation.* I have personally administered ''massive'' doses of narcotics to intubated critically ill pregnant patients who were being treated in an intensive care unit. I am pleased to say that the fetuses were born alive and did well.

3. Dr. Campbell has described the narcotic protocol which Dr. McMahon had used during his D & X procedures: it includes the administration of Midazolam (10–40 mg) and Fentanyl (900–2500 μg). Although there is no evidence that this massive dose will cause fetal demise, there is clear evidence that this excessive dose could cause maternal death. These doses are far in excess of any anesthetic that would be used by an anesthesiologist and even if they were incrementally given over a two or three hour period these doses would in all probability cause enough respiratory depression of the mother, to necessitate intubation and/or assisted respiration. Since Dr. McMahon can not be questioned regarding his ''heavy handed'' anesthetic practice. I am unable to explain why he would willingly administer such huge amounts of drugs if he did indeed administer 2500 μg of fentanyl and 40mg of midazolam to a patient in a clinic, without an anesthesiologist present, he was definitely placing the mother's life at great risk.

In conclusion, I would like to say that I believe that I have a responsibility as a practicing obstetric anesthesiologist to refute any and all testimony that suggests that maternally administered anesthesia causes fetal demise. It is my opinion that in order to achieve that goal one would need to administer such huge doses of anesthetic to the mother as to place her life at jeopardy. Pregnant women *must* get the message that should they need anesthesia for surgery or analgesia for labor, they may do so without worrying about the effects on their unborn child.

Thank you for your attention. I am happy to respond to your questions.

STATEMENT OF NORIG ELLISON, M.D., PRESIDENT, AMERICAN SOCIETY OF ANESTHESIOLOGISTS

Chairman Canady, members of the Subcommittee. My name is Norig Ellison, M.D., I am the President of the American Society of Anesthesiologists (ASA), a national professional society consisting of over 34,000 anesthesiologists and other scientists engaged or specially interested in the medical practice of anesthesiology. I am also Professor and Vice-Chair of the Department of Anesthesiology at the University of Pennsylvania School of Medicine in Philadelphia and a staff anesthesiologist at the Hospital of the University of Pennsylvania.

I appear here today for one purpose, and one purpose only: to take this issue with the testimony of James T. McMahon, M.D., before this Subcommittee last June. According to his written testimony, of which I have a copy, Dr. McMahon stated that anesthesia given to the mother as part of dilation and extraction abortion procedure eliminates any pain to the fetus and that a medical coma is induced in the fetus, causing a ''neurological fetal demise'', or—in lay terms—''brain death''.

I believe this statement to be entirely inaccurate. I am deeply concerned, moreover, that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary, even life-saving, medical procedures, total unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus. Annually over 50,000 pregnant women are anesthetized for such necessary procedures.

Although it is certainly true that some general analgesic medications given to the mother will reach the fetus and perhaps provide some pain relief, it is equally true that pregnant women are routinely heavily sedated during the second or third trimester for the performance of a variety of necessary surgical procedures with absolutely no adverse effect on the fetus, let alone death or ''brain death''. In my medical judgment, it would be necessary—in order to achieve ''neurological demise'' of the fetus in a ''partial birth'' abortion—to anesthetize the mother to such a degree as to place her own health in serious jeopardy.

As you are aware, Mr. Chairman, I gave the same testimony to a Senate committee four months ago. That testimony received wide circulation in anesthesiology circles and to a lesser extent in the lay press. You may be interested in the fact that since my appearance, not one single anesthesiologist or other physician has contacted me to dispute my stated conclusions. Indeed, two eminent obstetric anesthesiologists appear with me today, testifying on their own behalf and not as ASA representatives. I am pleased to note that their testimony reaches the same conclusions that I have expressed.

Thank you for your attention. I am happy to respond to your questions.

Mr. HOEKSTRA. Mr. Speaker, I submit for the RECORD the following:

SECOND TRIMESTER ABORTION: FROM EVERY ANGLE—FALL RISK MANAGEMENT SEMINAR

INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term Dilation and Extraction or D&X to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local

anesthesia. It can be used successfully in patients 20–26 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

BACKGROUND

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a ''right now'' solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early second trimester abortion to avoid necessary delays for instillation methods.[1] The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.[2,3,4]

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.[5]

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissues at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.[6,7,8]

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.[9]

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

PATIENT SELECTION

The author routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP.

The author refers for induction patients falling into the following categories: Previous C-section over 22 weeks; obese patients (more than 20 pounds over large frame ideal weight); twin pregnancy over 21 weeks; and patients 26 weeks and over.

DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows: Dilation; more dilation; real-time ultrasound visualization; version (as needed); intact extraction; fetal skull decompression; removal; clean-up; and recovery.

Day 1—Dilation: The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthetized and dilated to 9.11 mm. Five, six of seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

Day 2—More Dilation: The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

Day 3—The Operation: The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 IU Pitocin intramuscularly. The cervix is scrubbed, anesthetized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The tranducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up.

At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and ''hooks'' the shoulders of the fetus wit the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

Recovery: Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

ANESTHESIA

Lidocaine 1% with epinephrine administered intra-cervically is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change. 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100 mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given proplylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synalogos DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

FOLLOWUP

All patient are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique. He adds additional changes of Dilapan and/or lamineria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.[10]

SUMMARY

In conclusion, Dilation and Extraction is an alternative method for achieving late second trimester abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill, and may not be appropriate for a few patients.

REFERENCES

[1] Cates, W. Jr., Schulz, K.F., Grimes D.A., et al: The Effects of Delay and Method of Choice on the Risk of Abortion Morbidity, Family Planning Perspectives, 9:266, 1977.

[2] Borell, U., Emberey, M.P. Bygdeman, M., et al: Midtrimester Abortion by Dilation and Evacuation (Letter), American Journal of Obstetrics and Gynecology, 131:232, 1978.

[3] Centers for Disease Control: Abortion Surveillance 1978, p. 30, November, 1980.

[4] Grimes, D.A., Cates, W. Jr., (Berger, G.S. et al, ed): Dilation and Evacuation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright—PSG, 1981, p. 132.

[5] Ibid, p. 121–128.

[6] Ibid, p. 121.

[7] Kerenyi, T.D. (Bergen, G.S., et al, ed): Hypertonic Saline Installation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright-PSG, 1981, p. 79.

[8] Hanson, M.S. (Zatuchni, G. I., et al, ed): Midtrimester Abortion: Dilation and Extraction

[1] Footnotes at end of article.

Preceded by Laminaria, Pregnancy Termination Procedures, Safety and New Developments, Hagerstown, Harper and Row, 1979, p. 192.

[9] Hem, W.M., Abortion Practice, Philadelphia, J.B. Lippincott, 1990, p. 127, 144–6.

[10] McMahon, J., personal communications, 1992.

AMERICAN MEDICAL NEWS,
Chicago, IL, July 11, 1995.

Hon. CHARLES T. CANADY,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE CANADY: We have received your July 7, letter outlining allegations of inaccuracies in a July 5, 1993, story in American Medical News, ''Shock-tactic ads target late-term abortion procedure.''

You noted that in public testimony before your committee, AMNews is alleged to have quoted physicians out of context. You also noted that one such physician submitted testimony contending that AMNews misrepresented his statements. We appreciate your offer of the opportunity to respond to these accusations, which now are part of the permanent subcommittee record.

AMNews stands behind the accuracy of the report cited in the testimony. The report was complete, fair, and balanced. The comments and positions expressed by those interviewed and quoted were reported accurately and in-context. The report was based on extensive research and interviews with experts on both sides of the abortion debate, including interviews with two physicians who perform the procedure in question.

We have full documentation of these interviews, including tape recordings and transcripts. Enclosed is a transcript of the contested quotes that relate to the allegations of inaccuracies made against AMNews.

Let me also note that in the two years since publication of our story, neither the organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor at AMNews to complain about it. AMNews has a longstanding reputation for—balance, fairness and accuracy in reporting, including reporting on abortion, an issue that is as divisive within medicine as it is within society in general. We believe that the story in question comports entirely with that reputation.

Thank you for your letter and the opportunity to clarify this matter.

Respectfully yours,

BARBARA BOLSEN,
Editor.

Attachment.

AMERICAN MEDICAL NEWS TRANSCRIPT

(Relevant portions of recorded interview with Martin Haskell, MD)

AMN: Let's talk first about whether or not the fetus is dead beforehand . . .

Haskell: No, it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are (sic) dead before I actually start to remove the fetus. And probably the other two-thirds are not.

AMN: Is the skull procedure also done to make sure that the fetus is dead so you're not going to have the problem of a live birth?

Haskell: It's immaterial. If you can't get it out, you can't get it out.

AMN: I mean, you couldn't dilate further? Or is that riskier?

Haskell: Well, you could dilate further over a period of days.

AMN: Would that just make it . . . would it go from a 3-day procedure to a 4- or a 5-?

Haskell: Exactly. The point here is to effect a safe legal abortion. I mean, you could say the same thing about the D&E procedure. You know, why do you do the D&E procedure? Why do you crush the fetus up inside the womb? To kill it before you take it out?

Well, that happens, yes. But that's not why you do it. You do it to get it out. I could do the same thing with a D&E procedure. I could put dilapan in for four or five days and say I'm doing a D&E procedure and the fetus could just fall out. But that's not really the point. The point here is you're attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN, wrapping up the interview: I wanted to make sure I have both you and (Dr.) McMahon saying 'No' then. That this is misinformation, these letters to the editor saying it's only done when the baby's already dead, in case of fetal demise and you have to do an autopsy. But some of them are saying they[re getting that information from NAF. Have you talked to Barbara Radford or anyone over there? I called Barbara and she called back, but I haven't gotten back to her.

Haskell: Well, I had heard that they were giving that information, somebody over there might be giving information like that out. The people that staff the NAF office are not medical people. And many of them when I gave my paper, many of them came in, I learned later, to watch my paper because many of them have never seen an abortion performed of any kind.

AMN: Did you also show a video when you did that?

Haskell: Yeah. I taped a procedure a couple of years ago, a very brief video, that simply showed the technique. The old story about a picture's worth a thousand words.

AMN: As National Right to Life will tell you.

Haskell: Afterwards they were just amazed. They just had no idea. And here they're rapid supporters of abortion. They work in the office there. And . . . some of them have never seen one performed . . .

Comments on elective vs. non-elective abortions:

Haskell: And I'll be quite frank: most of my abortions are elective in that 20–24 week range . . . In my particular case, probably 20% are for genetic reasons. And the other 80% are purely elective . . .

[From the American Medical News]

SHOCK-TACTIC ADS TARGET LATE-TERM ABORTION PROCEDURE

FOES HOPE CAMPAIGN WILL SINK FEDERAL ABORTION RIGHTS LEGISLATION

(By Diane M. Gianelli)

WASHINGTON.—In an attempt to derail an abortion-rights bill maneuvering toward a congressional showdown, opponents have launched a full-scale campaign against late-term abortions.

The centerpieces of the effort are newspaper advertisements and brochures that graphically illustrate a technique used in some second- and third-trimester abortions. A handful of newspapers have run the ads so far, and the National Right to Life Committee has distributed 4 million of the brochures, which were inserted into about a dozen other papers.

By depicting a procedure expected to make most readers squeamish, campaign sponsors hope to convince voters and elected officials that a proposed federal abortion-rights bill is so extreme that states would have no authority to limit abortions—even on potentially viable fetuses.

According to the Alan Guttmacher Institute, a research group affiliated with Planned Parenthood, about 10% of the estimated 1.6 million abortions done each year are in the second and third trimesters.

Barbara Radford of the National Abortion Federation denounced the ad campaign as disingenuous, saying its ''real agenda is to outlaw virtually all abortions, not just late-term ones.'' But she acknowledged it is having an impact, reporting scores of calls from congressional staffers and others who have seen the ads and brochures and are asking pointed questions about the procedure depicted.

The Minneapolis Star-Tribune ran the ad May 12, on its op-ed page. The anti-abortion group Minnesota Citizens Concerned for Life paid for it.

In a series of drawings, the ad illustrates a procedure called ''dilation and extraction,'' or D&X, in which forceps are used to remove second- and third-trimester fetuses from the uterus intact, with only the head remaining inside the uterus.

The surgeon is then shown jamming scissors into the skull. The ad says this is done to create an opening large enough to insert a catheter that suctions the brain, while at the same time making the skull small enough to pull through the cervix.

''Do these drawings shock you?'' the ad reads. ''We're sorry, but we think you should know the truth.''

The ad quotes Martin Haskell, MD, who described the procedure at a September 1992 abortion federation meeting, as saying he personally has performed 700 of them. It then states that the proposed ''Freedom of Choice Act'' now moving through Congress would ''protect the practice of abortion at all stages and would lead to an increase in the use of this grisly procedure.''

ACCURACY QUESTIONED

Some abortion rights advocates have questioned the ad's accuracy.

A letter to the Star-Tribune said the procedure shown ''is only performed after fetal death when an autopsy is necessary or to save the life of the mother.'' And the Morrisville, Vt., Transcript, which said in an editorial that it allowed the brochure to be inserted in its paper only because it feared legal action if it refused quoted the abortion federation as providing similar information. ''The fetus is dead 24 hours before the pictured procedure is undertaken,'' the editorial stated.

But Dr. Haskell and another doctor who routinely use the procedure for late-term abortions told AMNews that the majority of fetuses aborted this way are alive until the end of the procedure.

Dr. Haskell said the drawings were accurate ''from a technical point of view.'' But he took issue with the implication that the fetuses were 'aware and resisting.''

Radford also acknowledged that the information her group was quoted as providing was inaccurate. She has since sent a letter to federation members, outlining guidelines for discussing the matter. Among the points:

Don't apologize; this is a legal procedure.

No abortion method is acceptable to abortion opponents.

The language and graphics in the ads are disturbing to some readers. ''Much of the negative reaction, however, is the same reaction that might be invoked if one were to listen to a surgeon describing step-by-step almost any other surgical procedure involving blood, human tissue, etc.''

Late-abortion specialists

Only Dr. Haskell, James T. McMahon, MD. of Los Angeles, and a handful of other doctors perform the D&X procedure, which Dr. McMahon refers to as ''intact D&E.'' The

more common late-term abortion methods are the classic D&E and induction, which usually involves injecting digoxin or another substance into the fetal heart to kill it, then dilating the cervix and inducing labor.

Dr. Haskell, who owns abortion clinics in Cincinnati and Dayton, said he started performing D&Es for late abortions out of necessity. Local hospitals did not allow inductions pass 18 weeks, and he had no place to keep patients overnight while doing the procedure.

But the classic D&E, in which the fetus is broken apart inside the womb, carries the risk of perforation, tearing and hemorrhaging, he said. So he turned to the D&X, which he says is far less risky to the mother.

Dr. McMahon acknowledged that the procedure he, Dr. Haskell and a handful of other doctors use makes some people queasy. But he defends it. ''Once you decide the uterus must be emptied, you then have to have 100% allegiance to maternal risk. There's no justification to doing a more dangerous procedure because somehow this doesn't offend your sensibilities as much.''

Brochure cites N.Y. case

The four-page anti-abortion brochures also include a graphic depiction of the D&X procedure. But the cover features a photograph of 16-month-old Ana Rosa Rodriquez, whose right arm was severed during an abortion attempt when her mother was 7 months pregnant.

The child was born two days later, at 32 to 34 weeks' gestation. Abu Hayat, MD. of New York, was convicted of assault and performing an illegal abortion. He was sentenced to up to 29 years in prison for this and another related offense.

New York law bans abortions after 24 weeks, except to save the mother's life. The brochure states that Dr. Hayat never would have been prosecuted if the federal ''Freedom of Choice Act'' were in effect, because the act would invalidate the New York statute.

The proposed law would allow abortion for any reason until viability. But it would leave it up to individual practitoners—not the state—to define that point. Postviability abortions, however, could not be restricted if done to save a woman's life or health, including emotional health.

The abortion federation's Radford called the Hayat case ''an aberration'' and stressed that the vast majority of abortions occur within the first trimester. She also said that later abortions usually are done for reasons of fetal abnormality or maternal health.

But Douglas Johnston of the National Right to Life committee called that suggestion ''blatantly false.''

''The abortion practitioners themselves will admit the majority of their late-term abortions are elective,'' he said. ''People like Dr. Haskell are just trying to teach others how to do it more efficiently.''

Numbers game

Accurate figures on second- and third-trimester abortions are elusive because a number of states don't require doctors to report abortion statistics. For example, one-third of all abortions are said to occur in California, but the state has no reporting requirements. The Guttmacher Institute estimates there were nearly 168,000 second- and third-trimester abortions in 1988, the last year for which figures are available.

About 60,000 of those occurred in the 16- to 20-week period with 10,660 at week 21 and beyond the institute says. Estimates were based on actual gestational age, as opposed to last menstrual period.

There is particular debate over the number of third-trimester abortions. Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 are performed annually. The abortion federation puts the number at 300 to 500. Dr. Haskell says that ''probably Koop's numbers are more correct.''

Dr. Haskell said he performs abortions ''up until about 25 weeks'' gestation, most of them elective. Dr. McMahon does abortions through all 40 weeks of pregnancy, but said he won't do an elective procedure after 26 weeks. About 80% of those he does after 21 weeks are nonelective, he said.

Mixed feelings

Dr. McMahon admits having mixed feelings about the procedure in which he has chosen to specialize.

''I have two positions that may be internally inconsistent, and that's probably why I fight with this all the time,'' he said.

''I do have moral compunctions. And if I see a case that's later, like after 20 weeks where it frankly is a child to me, I really agonize over it because the potential is so imminently there. I think, 'Gee, it's too bad that this child couldn't be adopted.'

''On the other hand, I have another position, which I think is superior in the hierarchy of questions, and that is: 'Who owns the child?' It's got to be the mother.''

Dr. McMahon says he doesn't want to ''hold patients hostage to my technical skill. I can say, 'No, I won't do that,' and then they're stuck with either some criminal solution or some other desperate maneuver.''

Dr. Haskell, however, says whatever qualms he has about third-trimester abortions are ''only for technical reasons, not for emotional reasons of fetal development.''

''I think it's important to distinguish the two,'' he says, adding that his cutoff point is within the viability threshold noted in Roe v. Wade, the Supreme Court decision that legalized abortion. The decision said that point usually occurred at 28 weeks ''but may occur earlier, even at 24 weeks.''

Viability is generally accepted to be ''somewhere between 25 and 26 weeks,'' said Dr. Haskell. ''It just depends on who you talk to.

''We don't have a viability law in Ohio. In New York they have a 24-week limitation. That's how Dr. Hayat got in trouble. If somebody tells me I have to use 22 weeks, that's fine. . . . I'm not a trailblazer or activist trying to constantly press the limits.''

Campaign's impact debated

Whether the ad and brochures will have the full impact abortion opponents intend is yet to be seen.

Congress has yet to schedule a final showdown on the bill. Although it has already passed through the necessary committees, supporters are reluctant to move it for a full House and Senate vote until they are sure they can win.

In fact, House Speaker Tom Foley (D, Wash.) has said he wants to bring the bill for a vote under a ''closed rule'' procedure, which would prohibit consideration of amendments.

But opponents are lobbying heavily against Foley's plan. Among the amendments they wish to offer is one that would allow, but not require, states to restrict abortion—except to save the mother's life—after 24 weeks.

Mr. BACHUS. Mr. Speaker, today I urge my colleagues to override President Clinton's veto of the most barbaric of abortion procedures. The Partial-Birth Abortion Ban Act will end this most cruel practice—a practice that even the American Medical Association's legislative council has publicly stated is, ''not a recognized medical technique.'' They also called this procedure, ''repulsive.'' I call it a cruel inhumane act—unfitting of a civilized society.

Abortion advocates argue that partial birth abortions are only used after 26 weeks of pregnancy in cases where the procedure is non-elective. But the abortionist's interpretation of non-elective has an enormous scope and includes: Severe fetal abnormality, Down's syndrome, cleft palate, pediatric pelvis—that is if the mother is under age 18, depression of the mother, and even ignorance of human reproduction.

Today, those who would support this horrible procedure tell us that it is not a common practice. Can anyone really take comfort in debating the number of babies subject to his death? And newly released information indicates that in New Jersey alone, over 1,500 partial birth abortions are performed annually—over three times the supposed national total. Whether it is a few hundred or tens of thousands or even one, wrong is wrong and no argument on how many will ever change that. A single life being taken in this way is reprehensible.

We as a society would not allow or condone the execution of a confessed, convicted mass murderer using this procedure. How could we in good conscience even consider its use against an innocent, unborn child.

The House has come so close to having the two-thirds majority necessary for a veto override. I say to my colleagues who have opposed this bill in the past—look again, deeply into your hearts, and I am sure you will come to the same conclusion that I have and act to end this terrible procedure.

Mr. POSHARD. Mr. Speaker, I rise in very strong support of the vote today to override the President's veto of the Partial-Birth Abortion Ban Act, and urge my colleagues to follow suit in finally banning this unethical abortion procedure.

Let me begin by saying, the question of whether partial-birth abortions are right or wrong goes far beyond whether an individual takes a pro-life or pro-choice stance. This debate is about using humane and ethical medical practices. Former Surgeon General C. Everett Koop said, ''Such a procedure cannot truthfully be called medically necessary for either the mother or for the baby.'' As compassionate human beings, we should not allow physicians to continue to perform this procedure, one that was simply created to make it easier and faster for them to perform late-term abortions.

During my time in Congress, I have always opposed abortion except to save the life of a mother. Opponents of this legislation continue to argue the procedure is necessary to saving the lives of many expectant mothers. However, they fail to recognize that H.R. 1833 explicitly provides that the ban ''shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury if no other medical procedure would suffice for that purpose.'' What the bill does is ban this procedure from being used electively, which a majority of those serving in Congress believes is the right and ethical thing to do.

The veto override of the Partial-Birth Abortion Ban Act deserves the support of every Member of Congress, regardless of your stance on the issue of abortion. I urge all of my colleagues—Democrat, Republican, pro-life, and pro-choice—to seriously consider the morality of this procedure. In fact because of the sheer nature of the procedure, a number of historically pro-choice members of this body supported the ban on both occasions it was considered by the House of Representatives. Let us again join together in a bipartisan manner and override the veto of the Partial-Birth Abortion Ban Act.

Ms. FURSE. Mr. Speaker, I rise to oppose the motion to override the President's veto of the Partial-Birth Abortion Ban Act, H.R. 1833. I voted against H.R. 1833 earlier this year. Sadly, there are rare and tragic circumstances in which a woman may be advised by her doctor that this procedure is medically necessary to save her life or avoid dire consequences to her health.

H.R. 1833 does not contain an exception for saving the health of the mother, and could actually increase risks to the mother's health. The exception in H.R. 1833 also fails to cover cases where the mother could lose her ability to have more children.

However rare, tragic circumstances surrounding a woman's pregnancy do sometimes exist. A woman who faces this awful choice should make her decision in consultation with her family and her physician, and I feel strongly that Congress should not second-guess the medical advice of licensed doctors or the moral decisions of families in such devastating situations.

I urge my colleagues to oppose this motion to override the President's veto.

Mr. BROWNBACK. Mr. Speaker, I submit the following for the RECORD:

AUSTRALIAN PLANNED PARENTHOOD DIRECTOR LISTS MANY REASONS FOR HIS PARTIAL-BIRTH ABORTIONS

(By Douglas Johnson, NRLC Federal Legislative Director)

The medical director for Planned Parenthood of Australia has revealed that he uses the partial-birth abortion procedure as his ''method of choice'' for abortions done after 20 weeks (4½ months), and that he performs such abortions for a broad variety of social reasons.

These revelations by Dr. David Grundmann have provoked a storm of controversy in the state of Queensland, the large state that occupies northeastern Australia.

Dr. Grundmann performs abortions at a Planned Parenthood clinic in Brisbane, the capital of Queensland. He described his abortion practices in a paper that he presented on August 30, 1994, at a conference at Monash University.

In the paper, Dr. Grundmann wrote that ''abortion is an integral part of family planning. Theoretically this means abortion at any stage of gestation. Therefore I favor the availability of abortion beyond 20 weeks.''

Dr. Grundmann wrote that ''dilatation and extraction'' is his ''method of choice'' for performing abortions from 20 weeks on. ''Dilatation and extraction'' (or ''dilation and extraction'') is a term ''coined'' by Dr. Martin Haskell of Dayton, Ohio, for the partial-birth abortion procedure, in which a living baby is partly delivered feet first, after which the skull is punctured and the brain removed by suction.

Dr. Grundmann himself described the procedure in a television interview as ''essentially a breech delivery where the fetus is delivered feet first and then when the head of the fetus is brought down into the top of the cervical canal, it is decompressed with a puncturing instrument so that it fits through the cervical opening.''

In his 1994 paper, Dr. Grundmann listed several ''advantages'' of this method, such as that it ''can be performed under local and/or twi-light anesthetic'' with ''no need for narcotic analgesics,'' ''can be performed as an ambulatory out-patient procedure,'' and there is ''no-chance of delivering a live fetus.''

Among the ''disadvantages,'' Dr. Grundmann wrote, is ''the aesthetics of the procedure are difficult for some people, and therefore it may be difficult to get staff.''

Dr. Grundmann wrote that in Australia, late second-trimester abortion is available ''in many major hospitals, in most capital cities and large provincial centres'' in cases of ''lethal fetal abnormalities'' or ''gross fetal abnormalities,'' or ''risk to maternal life,'' including ''psychotic/suicidal behavior.''

However, Dr. Grundmann said, his Planned Parenthood clinic also offers the procedure after 20 weeks for women who fall into five additional ''categories'':

''Minor or doubtful fetal abnormalities.''

''Extreme material immaturity, i.e., girls in the 11 to 14 year age group.''

Women ''who do not know they are pregnant,'' for example, because of amenorrhea [irregular menstruation] ''in women who are very active such as athletes or those under extreme forms of stress, i.e., exam stress, relationship breakup . . .''

''Intellectually impaired women, who are unaware of basic biology . . .''

''Major life crises or major changes in socio-economic circumstances. The most common example of this is a planned or wanted pregnancy followed by the sudden death or desertion of the partner who is in all probability the bread winner.''

''Abortion beyond 20 weeks is unavailable anywhere in Australia, except at our [Planned Parenthood] clinics for the last 5 categories,'' Dr. Grundmann wrote. Under the heading ''What can be done to improve or expand this service?'' Dr. Grundmann wrote, ''Demystify abortion particularly late abortion by appropriate education of the population.''

Election Issue: Dr. Grundmann's paper has been publicized by the Queensland Right to Life Association, and it has produced considerable controversy over the past two years, Dr. David van Gend said in an interview with NRL News. Dr. van Gend, a Brisbane general practitioner, is the secretary of the Queensland chapter of the World Federation of Doctors Who Respect Human Life (WFDWRHL).

Dr. van Gend took Dr. Grundmann's paper to Michael Horan, a member of the Queensland Parliament, who was the ''shadow health minister'' for the National-Liberal Coalition, which at that time was the opposition to the ruling government, which was headed by Premier Wayne Goss of the Labor Party.

Beginning in October 1994, Mr. Horan strongly attacked Dr. Grundmann's abortion practices in speeches on the floor of the Parliament. Mr. Horan demanded that the Goss Government take strong action to stop Dr. Grundmann's late abortions, which, he argued, violate Queensland law.

''What will it mean for the conscience of society and its respect for the law, if people are vividly aware of such brutality, such illegality, and then they see their leaders do nothing about it?'' Mr. Horan said in one speech. ''More importantly, what will it mean for all the defenseless babies who, unlike their peers in the hospital nurseries, will never see a human face, never feel a human touch, except that tight grip on their legs and the stab to the head?''

However, for more than a year, the Goss Government refused to take any meaningful action. Leaders of the Coalition promised to take steps against Dr. Grundmann if they were placed in power, and this became a major issue in the February 1996 elections, in which the Goss Government lost power.

''The late-term abortion issue was the clearest issue distinguishing the parties in the February election,'' Dr. van Gend told NRL News. ''The Labor Government had refused to act against Dr. Grundmann, while the National-Liberal Coalition leaders promised to immediately investigate the matter.''

For example, Liberal Party leader Joan Sheldon said that the partial-birth abortions ''are horrific and should be stopped.''

When the Coalition took over the government, Michael Horan became the Minister of Health. Recently, the government has placed an investigation of Dr. Grundmann in the hands of the state Medical Board, which has quasi-judicial investigative punitive powers, Dr. van Gend said.

AMA Rebukes Grundmann: The Queensland Branch of the Australian Medical Association (AMA) formed a ''working party'' on late abortion, which interviewed Dr. Grundmann regarding his abortion practices in September 1995.

As quoted by Mr. Horan in his speeches in Parliament, during this interview Dr. Grundmann said he has performed the partial-birth abortion procedure as late as 26½ weeks (past 6 months).

''There is no stage of pregnancy at which I regard the fetus as my patient,'' Dr. Grundmann told the panel.

Dr. Grundmann told the panel that just that month he had aborted a baby at 23 weeks for severe cleft palate. When it was pointed out that this condition can be corrected by surgery, Dr. Grundmann replied that this depends on whether the woman wants to put ''her fetus'' through all that surgery.

In April 1996, the AMA Queensland Branch issued a formal policy statement that said,''There is a duty of care to the fetus in the late second trimester of pregnancy.'' Therefore, the organization ''opposes late second trimester termination of pregnancy except in the gravest of circumstances,'' these being ''lethal'' or ''severe'' fetal malformation or ''unequivocal risk to the life of the mother where no other medical procedure would suffice to save the mother.'' This was viewed as a rebuke to Dr. Grundmann.

Dr. van Gend said that in an interview with Dr. Grundmann, ''I asked him if there was not something cold and premeditated, even grotesque, about setting out to dilate the birth canal to 75% of the fetal skull diameter, in order to ensure the head will lodge in the cervix [the opening to the womb], in order to have leisure to push a puncturing instrument through that head, in order to ensure 'no chance of delivering a live fetus'—when by dilating the canal one more centimetre he would enable the baby to slip out and be given to the care of a pediatrician. His response was to the effect that he was there to terminate that pregnancy, not to put the woman's fetus in an incubator.''

Asked by a radio interviewer, ''At what point do you believe the fetus becomes a sentient being?,'' Dr. Grundmann responded, ''When it is born.''

Dr. van Gend told *NRL News,*''At no stage during the Australian debate over partial-birth abortions has Dr. Grundmann or anyone else tried to pretend that the baby is already dead before the head is punctured. The Baby is wide awake and fully sensitive.''

Dr. van Gend explained that in Queensland, statutory law generally prohibits abortion,

but a 1986 court ruling known as ''the McGuire ruling'' provides for exceptions in cases in which there is a ''serious'' danger to a woman's life or health, including mental health. Dr. Grundmann has asserted that all of his abortions fit under these criteria. However, in a 1995 civil case, a Queensland judge ruled, ''I disbelieve Dr. Grundmann's assertions that he honestly and sincerely applied that test before each and every abortion which he performed.''

''If Dr. Grundmann is ever prosecuted, a jury would be asked to decide whether these late abortions—for these reasons, by this method— are justified under our law,'' Dr. van Gend said.

Queensland law requires that a death certificate be filed for abortions performed after 20 weeks, which Dr. Grundmann wrote is ''certainly an inconvenience.''

Mr. WATTS of Oklahoma. Mr. Speaker, recently, a physician asked exactly what we meant by the term, partial-birth abortion ban and instead of going through the grotesque explanation, we told her that she was right—we had been calling it by the wrong name. Late-term, or just plain abortion was probably more accurate.

However, one physician from my home State of Oklahoma said that she called it infanticide. No matter what you call it, this veto needs to be overridden.

Mr. Speaker, we are not talking about a medically proven treatment that is going to save thousands of lives. In fact, we are stating the exact opposite. This is not a medically necessary procedure. This is a gruesome execution.

We need to be a Congress that stands for right causes, right decisions, and plain old doing the right thing.

This late-term abortion—when the fetus is a viable baby—is the right thing for this Congress to do. It is commanded by anyone who believes in the sanctity of life.

We have had hundreds and hundreds of postcards, a petition with literally thousands of names of it and letters of support from Catholic bishops, evangelical pastors, and rabbis.

To my colleagues, I have to tell you: This is the right thing to do. Please vote to override the veto and stop this infanticide.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to H.R. 1833 and thus, in opposition to the misguided attempt to override the President's veto. I do so for many reasons, all of which I have stated before but will gladly reiterate in the hope of convincing those who might support this override attempt of the error of their actions.

The first is that in 1973, and more recently in 1992, the Supreme Court held that a woman has a constitutional right to choose whether or not to have an abortion. H.R. 1833 is a direct attack on the principles established in both Roe versus Wade and Planned Parenthood versus Casey.

H.R. 1833 is a direct challenge to Roe versus Wade (1973). This legislation would make it a crime to perform a particular abortion method utilized primarily after the 20th week of pregnancy. This legislation represents an unprecedented and unconstitutional attempt to ban abortion and interfere with a woman's right to choose and a physician's ability to provide the best medical care for their patients.

The second reason for my opposition is that H.R. 1833 would ban a range of late term abortion procedures that are used when a woman's health or life is threatened or when a fetus is diagnosed with severe abnormalities incompatible with life. Because H.R. 1833 does not use medical terminology, it fails to clearly identify which abortion procedures it seeks to prohibit, and as a result could prohibit physicians from using a range of abortion techniques, including those safest for the woman. If enacted, such a law would have a devastating effect on women who learn late in their pregnancies that their lives or health are at risk or that the fetuses they are carrying have severe, often fatal, anomalies.

The Republican Members of this body need look no further than their own party for women who have offered their own stories, as testimony to the need for such medical procedures.

Women like Coreen Costello, a loyal Republican and former abortion protester whose baby had a lethal neurological disease; Mary-Dorothy Lines, a conservative Republican who discovered her baby had severe hydrocephalus; and many others who needed this procedure to insure not only their health, but their ability to have more children in the future. These are the women who would be hurt by H.R. 1833—women and their families who face a terrible tragedy—the loss of a wanted pregnancy.

I heard first hand, during judiciary committee hearings, the pain of women who had this procedure. For hours we listened to their tales of emotional and physical suffering during their testimony.

In April, the President was joined by five women who were heartbroken to learn of their baby's fatal conditions. These women wanted their children more than life itself, but were advised that this procedure was their best chance to avert the risk of death or grave harm. He found their testimony moving, because for them, this was not about choice, but rather life. One of them described her predicament:

Our little boy had hydrocephally. All the doctors told us there was no hope. We asked about in utero surgery, about shunts to remove the fluid, but there was absolutely nothing we could do. I cannot express the pain we still feel. This was our precious little baby, and he was being taken from us before we even had him. This was not our choice, for not only was our son going to die, but the complications of the pregnancy put my health in danger, as well.

In Roe, the Supreme Court established that after viability, abortion may be banned by States as long as an exception is provided in cases in which the woman's life or health is at risk. H.R. 1833 provides no true exceptions for cases in which a banned procedure would be necessary to preserve a woman's life or health.

Finally, and perhaps most importantly, this bill would create an unwarranted intrusion into the physician-patient relationship by preventing physicians from providing necessary medical care to their patients. It would further intrude into this sacred association by making doctors felons for doing that which they have taken an oath to do: protect the lives of their patients. I am incredulous that physicians will be seen as criminals in the eyes of the law for attempting to save the life of an innocent mother. Furthermore, it would impose a horrendous burden on families who are already facing a crushing personal situation.

In passing H.R. 1833, this Congress would set an undesirable precedent which goes way beyond the scope of the abortion debate. Will we someday be standing here debating the validity of a triple bypass or hip replacement procedure? Many of my colleagues decry the intrusion of the Federal Government into the lives of its citizens, but isn't interfering in the doctor-patient relationship one of the most intrusive actions that can be conceived?

This bill unravels the fundamental constitutional rights that American women have to receive medical treatment that they and their doctors have determined are safest and medically best for them. By seeking to ban a safe and accepted medical technique, Members of Congress are intruding directly into the practice of medicine and interfering with the ability of physicians and patients to determine the best course of treatment. The creation of felony penalties and Federal tort claims for the performance of a specific medical procedure would mark a dramatic and unprecedented expansion of congressional regulation of health care.

The determination of the medical need for, and effectiveness of, particular medical procedures must be left to the medical profession, to be reflected in the standard of care.

While these are my reasons for opposing H.R. 1833 and this veto override, I believe it is time to clear up some facts associated with the procedure being debated here.

To begin with, the term ''partial birth abortion'' is not found in any medical dictionaries, textbooks or coding manuals. The definition in H.R. 1833 is so vague as to be uninterpretable, yet chilling. Many OB/GYN's fear that this language could be interpreted to ban all abortions where the fetus remains intact. The supporters of this bill want to intimidate doctors into refusing to do abortions. Given the bill's vagueness, few doctors will risk going to jail in order to perform this procedure. As a result, women and their families will find it even more difficult, if not impossible, to find a doctor who will perform a late-term abortion, and women's lives will be put in even more jeopardy.

In addition, late term abortions are not common. Ninety-five and five tenths percent of abortions take place before 15 weeks. Only a little more than one-half of one percent take place at or after 20 weeks. Fewer than 600 abortions per year are done in the third trimester and all are done for reasons of life or health of the mother—severe heart disease, kidney, failure, or rapidly advancing cancer—and in the case of severe fetal abnormalities incompatible with life—no eyes, no kidneys, a heart with one chamber instead of four or large amounts of brain tissue missing or positioned outside of the skull, which itself may be missing.

An abortion performed in the last second trimester or in the third trimester of pregnancy is extremely difficult for everyone involved. However, when serious fetal anomalies are discovered late in a pregnancy, or the mother develops a life-threatening medical condition that is inconsistent with the continuation of the pregnancy, abortion—however heart-wrenching—may be medically necessary.

In such cases, the intact dilation and extraction procedure [IDE]—which would be outlawed by this bill—may provide substantial medical benefits. It is safer in several respects than the alternatives, maintaining uterine integrity, and reducing blood loss and other potential complications.

Let me set the record straight, no one is advocating the abuse of this process and those who would state differently are exaggerating the frequency and circumstances under which this procedure is done. I have great confidence in the American doctors and women to do the right thing and not use this procedure for nothing less than saving the life of the mother.

The decision to have an abortion is a very difficult one for any woman, and I do not understand how the many Members of this House, who will never face the possibility, can belittle the anguish that such a decision causes. The determination of whether abortion is appropriate for any individual is something that should be left up to herself, her family and her God. And I am sickened and appalled that so many Members of this usually honorable body would use this very private issue for political gain. How they can minimize the tragedy that befalls families when the loved and desired child is found to be inviable and the ability for the mother to bear future children is in great jeopardy, I do not know nor do I understand. During these times of misfortune, one calls upon one's spiritual strength and to think the Government would have the effrontery to intrude makes a mockery of the Constitution and an individual's right to privacy. In short, we are not advocating this procedure on demand or for feeble complaints regarding health or convenience. To deny physicians the ability to use all of their medical resources to avoid loss of life and save the mother would be to treat these women less than human.

The legislative process is ill-suited to evaluate complex medical procedures whose importance may vary with a particular patient's case and with the state of scientific knowledge. The mothers and families who seek late term abortions are already severely distressed. They do not want an abortion—they want a child. Tammy Watts told us that she would have done anything to save her child. She said, ''If I could have given my life for my child's I would have done it in a second.''

This bill is bad medicine, bad law, and bad policy. Women facing late term abortions due to risks to their lives, health or severe fetal abnormalities incompatible with life must be able to make this decision in consultation with their families, their physicians, and their God. Women do not need medical instruction from the Government. To criminalize a physician for using a procedure which he or she deems to be safest for the mother is tantamount to legislating malpractice. I urge my colleagues to do what is right and sustain the President's veto.

Mr. COYNE. Mr. Speaker, I am opposed to H.R. 1833 because I oppose any legislation that fails to provide for the health concerns of the mother when she and her doctor believe that her health is in jeopardy. This legislation does not provide an exception for serious health risks to the mother.

This procedure should only be used in cases where there is a serious risk to a woman's health and I believe the legislation could have been drafted to allow a limited exception for those cases in which it is truly necessary. In fact, Pennsylvania has such an exception in its abortion law. Under Pennsylvania law, all late-term abortions are prohibited, except in cases in which it is necessary to preserve the life of the mother or to ''prevent a substantial and irreversible impairment of a major bodily function.'' Surely the supporters of this legislation could have written a health exception that would prohibit the procedure in most cases but that would allow women and their physicians, in the most limited and serious of cases, access to a procedure that will preserve both the life and health of the women involved.

Further, I am opposed to this legislation because I believe that medical decisions of this nature should be left to trained medical professionals, in consultation with their patients. I do not believe that this legislation, which forecloses medical options for women, belongs before the Congress. This Congress is not comprised of medical professionals with the knowledge or expertise to make medical judgments about appropriate treatment for women in these tragic circumstances. I believe that these judgments must be left in the hands of people who are trained to give medical guidance to their patients, and then the decision regarding the course of action to take must rest with women, their families, their physicians and their religious counselors—not with Congress.

I am ready to support legislation that limits this abortion procedure to the most serious of cases, but I am not prepared to ban it in those cases where it represents the best hope for a woman to avoid serious risk of her health.

Mr. BUNN of Oregon. Mr. Speaker, over 300 physicians, including C. Everett Koop, have joined together to expose the misinformation campaign of the supporters of partial-birth abortion. I insert the facts provided by PHACT in the CONGRESSIONAL RECORD:

A NATIONAL COALITION OF DOCTORS SAYS IT'S UNSAFE AND UNNECESSARY

The Physicians' Ad Hoc Coalition for Truth (PHACT) was formed because we, as physicians, can no longer stand by while abortion advocates, the President of the United States and the media continue to repeat false claims to members of Congress and to the public about partial-birth abortion. We are over 300 doctors strong, most specialists in obstetrics, gynecology, maternal/fetal medicine and pediatrics.

By congressional definition, partial-birth abortion is the killing of an infant who has already been partially delivered outside his or her mother's body. Medically, it is accomplished by pulling an infant feet-first out of the birth-canal until all but the head is exposed. The surgeon then forces scissors into the base of the baby's skull, spreads them, and inserts a suction catheter through which he suctions out the brain.

Congress, the public—but most importantly women—need to know that partial-birth abortion is never medically necessary to protect a mother's health or her future fertility.

On the contrary, this procedure can pose a significant threat to both. I the words of former Surgeon General C. Everett Koop: ''In no way can I twist my mind to see that partial birth—and then destruction of the unborn child before the head is born—is a medical necessity for the mother.''

Now you know the facts.

We urge you to tell your representatives to stop this unnecessary and dangerous procedure. The vote is this week. Please call now.

FORMER SURGEON GENERAL KOOP SEPARATES MEDICAL FACT FROM FICTION ON PARTIAL-BIRTH ABORTIONS—KOOP: THE PARTIAL-BIRTH ABORTION IS ''IN NO WAY . . . A MEDICAL NECESSITY''

ALEXANDRIA, VA.—In a wide ranging interview with the American Medical News, former Surgeon General C. Everett Koop expressed his opposition to partial-birth abortions and declared that they are not medically necessary.

The former Surgeon General was asked about President Clinton's recent veto of a bill to ban partial-birth abortions and claims regarding the medical need for them. Following is Dr. Koop's response, reported in the August 19th issue of American Medical News:

''I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortion as described—you know, partial-birth, and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I am opposed to * * * partial birth abortions.''

Asked ''have you ever treated children with any of the disabilities cited in the debate? For example have you operated on children with organs outside of their bodies,'' Koop responded:

''Oh, yes indeed. I've done that many times. The prognosis is usually good. [With an] omphalocele * * * organs are out but still contained in the sac composed of the tissues of the umbilical cord. I have been repairing those since 1946. In fact, the first child I ever did, with a huge omphalocele much bigger than her head, went on to develop well and become the head nurse in my intensive care unit many years later.''

Dr. Koop's remarks echo over three hundred other medical professionals—leaders in the fields of obstetrics, gynecology and perinatology—who have joined the Physicians' Ad-hoc Coalition for Truth to help Americans and Congress understand that partial-birth abortion is never medically necessary, and in fact can threaten a mother's health and safety.

The Physicians' Ad-hoc Coalition for Truth (PHACT), with over three hundred members drawn from the medical community nationwide, exists to bring the medical facts to bear on the public policy debate regarding partial birth abortions. Members of the coalition are available to speak to public policy makers and the media. If you would like to speak with a member of PHACT, please contact Gene Tarne or Michelle Powers at 703–683–6004.

PHYSICIANS' AD HOC
COALITION FOR TRUTH,
Alexandria, VA, September 18, 1996.

DEAR MEMBER OF CONGRESS: We write to you as founding members of the Physicians' Ad-hoc Coalition for Truth (PHACT), an organization of over three hundred members drawn from the medical community nationwide—most ob/gyns, perinatologist and pediatricians—concerned and disturbed over the medical misinformation driving the partial-birth abortion debate. As doctors, we cannot remember another issue of public policy so directly related to the medical community that has been subject to such distortions and outright falsehoods.

The most damaging piece of medical disinformation that seems to be driving this debate is that the partial-birth abortion procedure may be necessary to protect the lives, health and future fertility of women. You have heard this claim most dramatically not from doctors, but from a handful of women who chose to have a partial-birth abortion when their children were diagnosed with some form of fetal abnormality.

As physicians who specialize in the care of pregnant women and their children, we have all treated women confronting the same tragic circumstances as the women who have publicly shared their experiences to justify

this abortion procedure. So as doctors intimately familiar with such cases, let us be very clear: the partial-birth abortion procedure, as described by Dr. Martin Haskell (the nation's leading practitioner of the procedure) and defined in the Partial-Birth Abortion Ban Act, is never medically indicated and can itself pose serious risks to the health and future fertility of women.

There are simply no obstetrical situations encountered in this country which require a partially-delivered human fetus to be destroyed to preserve the life, health or future fertility of the mother. Not for hydrocephaly (excessive cerebrospinal fluid in the head); not for polyhydramnios (an excess of amniotic fluid collecting in the woman); and not for trisomy (genetic abnormalities characterized by an extra chromosome).

Our members concur with former Surgeon General C. Everett Koop's recent statement that ''in no way can I twist my mind to see that [partial-birth abortion] is a medical necessity for the mother.''

As case in point would be that of Ms. Coreen Costello, who has appeared several times before Congress to recount her personal experience in defense of this procedure. Her unborn child suffered from at least two conditions: ''polyhydramnios secondary to abnormal fetal swallowing,'' which causes amniotic fluid to collect in the uterus, and ''hydrocephalus'', a condition that causes an excessive amount of fluid to accumulate in the fetal head.

The usual treatment for removing the large amount of fluid in the uterus is a procedure called amniocentesis. The usual treatment for draining excess fluid from the fetal head is a procedure called cephalocentesis. In both cases the excess fluid is drained by using a thin needle that can be placed inside the womb through the abdomen (''transabdominally''—the preferred route) or through the vagina (''transvaginally.'') The transvaginal approach however, as performed by Dr. McMahon on Ms. Costello, puts the woman at an increased risk of infection because of the non-sterile environment of the vagina. Dr. McMahon used this approach most likely because he had no significant expertise in obstetrics and gynecology. After the fluid has been drained, and the head decreased in size, labor would be induced and attempts made to deliver the child vaginally. Given these medical realities, the partial-birth abortion procedure appropriate to address the medical complications described by Ms. Costello or any of the other women who were tragically misled into believing they had no other options.

Indeed, the partial-birth abortion procedure *itself* can pose both an immediate and significant risk to a woman's health and future fertility. To take just one example, to forcibly dilate a woman's cervix over the course of several days, as this procedure requires, risks creating an ''incompetent cervix,'' a leading cause of future premature deliveries. It seems to have escaped anyone's attention that one of the five women who appeared at President Clinton's veto ceremony who had a partial-birth abortion subsequently had five miscarriages.

The medical evidence is clear and argues overwhelmingly against the partial-birth abortion procedure. Given the medical realities, a truly pro-woman vote would be to end the availability of a procedure that is so potentially dangerous to women. The health status of women and children in this country can only be enhanced by your unequivocal support of H.R. 1833.

Thank you for your consideration.

Sincerely,

NANCY G. ROMER, M.D.,
FACOG, Clinical Professor, Department of Obstetrics and Gynecology, Wright State University, Chairman, Dept. of Ob/Gyn, Miami Valley Hospital, OH.

CURTIS R. COOK, M.D.,
Maternal Fetal Medicine, Butterworth Hospital, Michigan State College of Human Medicine.

PAMELA E. SMITH, M.D.,
Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Medical Center, Chicago, IL., Member, Association of Professors of Ob/Gyn.

JOSEPH L. DECOOK, M.D.,
FACOG, Holland, MI.

DOCTORS' GROUP PROMOTING MEDICAL FACTS ABOUT PARTIAL-BIRTH ABORTION QUICKLY SWELLS TO OVER 300 MEMBERS—MEDICAL SPECIALISTS NATIONWIDE STAND FIRM: PARTIAL-BIRTH ABORTION NEVER A MEDICAL NECESSITY

ALEXANDRIA, VA.—The Physicians Ad-hoc Coalition for Truth (PHACT) has quickly grown to over 300 doctors nationwide, actively promoting the fact that partial-birth abortions are never medically necessary.

PHACT was formed by medical professionals concerned about repeated medical misstatements about the procedure known as partial-birth abortion. The misleading and false information is potentially dangerous to women and their children.

Specialists from around the country in the fields of obstetrics, gynecology, perinatology (maternal and fetal medicine) and pediatric medicine have joined PHACT to correct misstatements and distortions rampant in the debate over partial-birth abortions, and to promote the fact that a partial-birth abortion is never medically necessary to protect the health of a woman or to protect her future fertility. In fact, the procedure can pose grave dangers to the woman, and is not recognized in the medical community.

Recently, former Surgeon General G. Everett Koop publicly confirmed that the partial birth abortions are not medically necessary procedures. During an interview published in 8/19/96 issue of American Medical News, Dr. Koop remarked ''I believe Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that late-term abortion as described—you know, the partial-birth, and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I am opposed to partial-birth abortions.''

The current PHACT membership of over 300 far surpasses the founding members' stated goal to attract 200 members. PHACT was formed in late July of this year, and held a Congressional briefing on July 24 as their debut event to educate Congress and the public on the medical facts about partial-birth abortion.

The Physicians' Ad-hoc Coalition for Truth (PHACT) exists to bring the medical facts to bear on the public policy debate regarding partial birth abortions. Members of the coalition are available to speak to public policy makers and the media. If you would like to speak with a member of PHACT, please contact Gene Tarne and Michelle Powers at 703–683–5004.

THE CASE OF COREEN COSTELLO—PARTIAL-BIRTH ABORTION WAS NOT A MEDICAL NECESSITY FOR THE MOST VISIBLE ''PERSONAL CASE'' PROPONENT OF PROCEDURE

Coreen Costello is one of five women who appeared with President Clinton when he vetoed the Partial-Birth Abortion Ban Act (4/10/96). She has probably been the most active and the most visible of those women who have chosen to share with the public the very tragic circumstances of their pregnancies which, they say, made the partial-birth abortion procedure their only medical option to protect their health and future fertility.

But based on what Ms. Costello has publicly said so far, her abortion was not, in fact, medically necessary.

In addition to appearing with the President at the veto ceremony, Ms. Costello has twice recounted her story in testimony before both the House and Senate; the New York Times published an op-ed by Ms. Costello based on this testimony; she was featured in a full page ad in the Washington Post sponsored by several abortion advocacy groups; and, most recently (7/29/96) she has recounted her story for a ''Dear Colleague'' letter being circulated to House members by Rep. Peter Deutsch (FL).

Unless she were to decide otherwise, Ms. Costello's full medical records remain, of course, unavailable to the public, being a matter between her and her doctors. However, Ms. Costello has voluntarily chosen to share significant parts of her very tragic story with the general public and in very highly visible venues. Based on what Ms. Costello has revealed of her medical history—of her own accord and for the stated purpose of defeating the Partial-Birth Abortion Ban Act—doctors with PHACT can only conclude that Ms. Costello and others who have publicly acknowledged undergoing this procedure ''are honest women who were sadly misinformed and whose decision to have a partial-birth abortion was based on a great deal of misinformation'' (Dr. Joseph DeCook, Ob/Gyn, PHACT Congressional Briefing, 7/24/96). Ms. Costello's experience does not change the reality that a partial birth abortion is never medically indicated—in fact, there are available several alternative, standard medical procedures to treat women confronting unfortunate situations like Ms. Costello had to face.

The following analysis is based on Ms. Costello's public statements regarding events leading up to her abortion performed by the late Dr. James McMahon. This analysis was done by Dr. Curtis Cook, a perinatologist with the Michigan State College of Human Medicine and member of PHACT.

''Ms. Costello's child suffered from 'polyhydramnios secondary to fetal swallowing defect.' In other words, the child could not swallow the amniotic fluid, and an excess of the fluid therefore collected in the mother's uterus. Because of the swallowing defect, the child's lungs were not properly stimulated, and an underdevelopment of the lungs would likely be the cause of death if abortion had not intervened. The child had no significant chance of survival, but also would not likely die as soon as the umbilical cord was cut.

''The usual approach in such a case would be to reduce the amount of amniotic fluid collecting in the mother's uterus by serial amniocentesis. Excess fluid in the fetal ventricles could also be drained. Ordinarily, the draining would occur 'transabdominally.' Then the child would be vaginally delivered, after attempts were made to move the child into the usual, head-down position. Dr. McMahon, who performed the draining of cerebral fluid on Ms. Costello's child, did so 'transvaginally,' most likely because he had no significant expertise in obstetrics/gynecology. In other words, he would not be able to do it well transabdominally—the standard method used by ob/gyns—because that takes a degree of expertise he did not possess.

''Ms. Costello's statement that she was unable to have a vaginal delivery, or, as she called it, 'natural birth or an induced labor,'

is contradicted by the fact that she did indeed have a vaginal delivery, conducted by Dr. McMahon. What Ms. Costello had was a breech vaginal delivery for purposes of aborting the child, however, as opposed to a vaginal delivery intended to result in a live birth. A cesarean section in this case would not be medically indicated—not because of any inherent danger—but because the baby could be safely delivered vaginally.''

The Physicians' Ad-hoc Coalition for Truth (PHACT), with over three hundred members drawn from the medical community nationwide, exists to bring the medical facts to bear on the public policy debate regarding partial birth abortions. Members of the coalition are available to speak to public policy makers and the media. If you would like to speak with a member of PHACT, please contact Gene Tarne or Michelle Powers at 703–683–5004.

Mr. UNDERWOOD. Mr. Speaker, I rise today to urge my colleagues to vote for the override of the President's veto of the partial birth abortion bill. I sponsored the original legislation because it would protect the sanctity of life and prevent the cruel and inhumane killing of unborn children.

We know all too well the arguments on both sides of this issue. Opponents of the bill argue that the partial birth abortion procedure does not exist because it is only used to deliver babies who are already dead. This argument is nonsensical because the definition of a partial birth abortion requires the partial delivery of a fetus which is still alive. A living fetus is viable and we should respect its humananity.

Another argument offered by those who oppose the bill is that this procedure is rare and utilized only in dire circumstances, when the baby is defective or the mother's life is in danger. This is not true. Many doctors admit that partial birth abortions are elective and are quite common. There are many reasons why women have late-term abortions. Some cite the lack of money or adequate health insurance to support the child. Others may have social or psychological problems which hinder their ability to go to full term on their pregnancy.

No matter what reasons are cited, this brutal and senseless procedure should never be allowed.

We can certainly find humane ways to deal with whatever reasons or undue burdens which cause women to resort to partial birth abortions. But we should not, as a nation, sanction this procedure: it is wrong, wrong, wrong.

For me and the people of Guam whom I represent, the importance of childbearing and the worth of children in our culture are cornerstones for sustaining family values. For us, abortion is not an option; it is something we vigorously oppose because it destroys our concept of family preservation.

I join the U.S. Catholic Conference, a number of antiabortion groups, and a majority of my colleagues in the House in supporting the overturn of the veto on this important legislation. This is not a constitutional issue, nor a health policy issue—this is an issue of protecting children who are killed before they are given a chance to experience their humanity.

Mr. BEILENSON. Mr. Speaker, I rise in strong opposition to the ill-advised attempt to override the President's veto of H.R. 1833.

The President's veto should be sustained—especially because this is a bill that, on the pretense of seeking to ban certain vaguely defined abortion procedures, is in reality an assault on the constitutionally guaranteed right of women to reproductive freedom and on the freedom of physicians to practice medicine without government intrusion.

This legislation would be a direct blow to the fight many of us led for many, many years to secure—and then to preserve and to protect—the right of every woman to choose a safe medical procedure to terminate a wanted pregnancy that has gone tragically wrong, and when her life or health are endangered.

The President correctly vetoed the legislation because it does not contain a true life and health exception provision. It does contain an extremely narrow life exception, and it requires further that no other medial procedure would suffice. But it provides no exception at all to preserve the woman's health, no matter how seriously or permanently it will be damaged.

This exception is obviously a basic and fundamental concern to women and their families. Without it, the bill will force a woman and her physician to resort to procedures that may be more dangerous to the woman's health—and to her very life—and that may be more threatening to her ability to bear other children, than the method banned.

If this exception had been included, the bill would have at least shown some respect for the paramount importance of a woman's life, health, and future fertility.

The truth is, however, that we have absolutely no business considering this prohibition and criminalization of a constitutionally protected medical procedure.

This is a dangerous piece of legislation. It is the first time the Federal Government would ban a particular method of abortion, and it is part of an effort to make it almost impossible for any abortion to be performed late in a pregnancy—no matter how endangered the mother's life or health might be.

At stake here is whether or not we will be compassionate enough to recognize that none of us in this legislative body has all the answers to every tragic situation.

We are debating not merely whether to outlaw a procedure, but under what terms. If legislation must be passed that is unprecedented in telling physicians which medical procedures they may not, despite their own best judgment, use, then it must permit a life or adverse health exception. That is the only way that the legislation might possibly meet the requirements that have been handed down by the U.S. Supreme Court.

Mr. Speaker, on a personal note, I authored California's Therapeutic Abortion Act, which was one of the first laws in the Nation to protect the lives and health of women. Members may recall that then Gov. Ronald Reagan signed my legislation into law in 1967. That was a difficult and hard-won fight; it helped, I believe, save the lives of several million women, and as I look back on my legislative career, it is the legislation I am most proud of.

When the U.S. Supreme Court ruled subsequently that the Government cannot restrict abortion in cases where it is necessary to preserve a woman's life or health, I believed that we had come to at least accept the precept that every woman should have the right to choose, with her family and her physician, but without government interference, and when her life and health are endangered, how to deal with this most personal and difficult decision.

I see now that I was obviously wrong, because this Congress is willing even to criminalize for the first time a safe medical procedure that is used only very, very rarely and to end the most tragic of pregnancies. These are situations that are so desperate that it is hard to understand why most people, except those who are opposed to abortion under any circumstance at all, would not be able to understand that these are the very situations that should be protected.

This is not a moderate measure, Mr. Speaker. It is an absolute tragedy for women and their families who could very well find themselves in the very desperate and tragic situation of other women who have had the courage to talk about the seriously defective pregnancies they had to end if they were to live or to protect their health and future fertility.

We are talking about making a crime a medical procedure that is used only in very rare cases—fewer than 500 a year. It is a procedure that is needed only as a last resort, in cases where pregnancies that were planned, and that are wanted, have gone tragically wrong.

Choosing to have an abortion is always a terribly difficult and awful decision for a family to make. But we are dealing here with particularly wrenching decisions in particularly tragic circumstances. It seems to me that it would be more than fitting if we showed restraint and compassion for women who are facing those devastating decisions.

Mr. Speaker, we should uphold the President's veto of this legislation that is unwise, unconstitutional, and terrible public policy that would return us to the dangerous situation that existed over 30 years ago.

Mr. McDADE. Mr. Speaker, today the House of Representatives has the opportunity to stop the appalling practice known as partial-birth abortion. I cosponsored and supported the legislation to ban partial-birth abortions both because I am committed to protecting the rights of the unborn and because they are particularly morally repugnant.

I will vote to override the President's veto and encourage my colleagues to join me so that H.R. 1833, the Partial Birth Abortion Ban Act can be enacted.

A partial-birth abortion is not, as President Clinton would have us believe, an ordinary medical procedure. It is a gruesome practice which pulls a baby from its mother's womb and ends its life.

There is no gray area in this debate. This heinous practice—coming very late in the pregnancy—is clearly the killing of a human baby.

Thousands of Americans have written and called this House to plead that we enact the Partial-Birth Abortion Ban Act and protect the right to life of these late-term children. I pray that we will hear their plea and override the President's veto.

Mr. SENSENBRENNER, Mr. Speaker, I strongly support overriding President Clinton's veto of H.R. 1833, the Partial Birth Abortion Ban Act.

The President's veto of the Partial Birth Abortion Ban Act is morally indefensible and his reason for vetoing the bill does not hold up under closer scrutiny. The President claims this abortion procedure is necessary, in fact, the ''only way,'' for women with certain prenatal complications to avoid serious physical damage, including the ability to bear further

children. If this is true, then why is partial-birth abortion not taught in a single medical residency program anywhere in the United States? Why is it not recognized as an accepted surgery by the American College of Obstetricians and Gynecologists? Actually, the American Medical Association's legislative council voted unanimously to endorse the partial-birth abortion ban.

The fact is, a partial-birth abortion is never necessary to preserve the health of future fertility of the mother. However, you do not have to take my word for it, listen to what former Surgeon General C. Everett Koop has to say on the subject. Mr. Koop stated:

I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortions as described—you know, partial birth, and then destruction of the unborn child before the head is born—is a medical necessity for the mother.

The dangerous reality is, according to undisputed expert medical testimony given before the House Subcommittee on the Constitution, the partial-birth abortion can be harmful to the mother in several ways. First, the cervix must be forcefully dilated, threatening future pregnancies by weakening the cervix. Next, the surgeon's hand must be inserted into the uterus to turn the baby around. This maneuver is so dangerous that it has been avoided in obstetrical practice for decades. Finally, the removal of the baby's brain while the head remains in utero may expose sharp fragments of bone. Uterine laceration and severe hemorrhaging may result.

The difference between a partial-birth abortion and homicide is a mere three inches. A society that strives for civility should not tolerate such barbarism.

Mr. KLECZKA. Mr. Speaker, I rise today in strong support of H.R. 1833, which will stop the senseless and inhumane practice of partial birth abortions.

Patial birth abortions are gruesome, they are horrific and they are wrong.

I voted in favor of H.R. 1833 on November 1, 1995 and again on March 27, 1996. Today, I continue my support for this much-needed legislation by once again voting for H.R. 1833—and voting to override the President's veto.

Critics of this bill say the majority of these procedures are health related. Yet documents obtained by the committees studying this issue show that the majority of late-term abortions are not done for medical reasons at all.

Critics of this measure say it will harm mothers whose babies pose a life-threatening hazard to their health. Yet H.R. 1833 contains an exception that protects the mother if her life is in danger. This exception allows the procedure if it is ever ''necessary to save the life of a woman whose life is endangered by a physician disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.''

We must, as a society, move to address this issue with compassion and with courage. The destruction of human life that results from a partial birth abortion must stop now. I am pleased to join my colleagues in voting to end this unnecessary and unethical procedure.

Mr. Christensen. Mr. Speaker, I rise today in favor of overriding the President's veto of the Partial-Birth Abortion Ban Act.

I was honored to be an original cosponsor of this legislation because it takes a stand against the most horrid abuses of the abortion industry—abortions that are committed on a child that is partially born before the abortionist kills the child.

This procedure is so indefensible that its proponents have been left to medical distortions and falsehoods to defend their position.

According to Dr. Nancy Romer, of Wright State University, ''there is no medical evidence that the partial birth abortion procedure is safer or necessary to provide comprehensive health care to women.'' Dr. Romer dealt with the medical issues surrounding this procedure in greater detail in an op-ed in today's Wall Street Journal, and I submit it for the RECORD.

I believe that each of us—not just as Members of Congress but as citizens and as human beings—has a moral obligation to stand up in defense of our Nation's children and put an end to this horrible procedure, and I urge my colleagues to support over-riding the President's veto.

[From the Wall Street Journal, Sept. 19, 1996]

PARTIAL-BIRTH ABORTION IS BAD MEDICINE

(By Nancy Romer, Pamela Smith, Curtis R. Cook, and Joseph L. DeCook)

The House of Representatives will vote in the next few days on whether to override President Clinton's veto of the Partial Birth Abortion Ban Act. The debate on the subject has been noisy and rancorous. You've heard from the activists. You've heard from the politicians. Now may we speak?

We are the physicians who, on a daily basis, treat pregnant women and their babies. And we can no longer remain silent while abortion activists, the media and even the president of the United States continue to repeat false medical claims about partial-birth abortion. The appalling lack of medical credibility on the side of those defending this procedure has forced us—for the first time in our professional careers—to leave the sidelines in order to provide some sorely needed facts in a debate that has been dominated by anecdote, emotion and media stunts.

Since the debate on this issue began, those whose real agenda is to keep all types of abortion legal—at any stage of pregnancy, for any reason—have waged what can only be called an orchestrated misinformation campaign.

First the National Abortion Federation and other pro-abortion groups claimed the procedure didn't exist. When a paper written by the doctor who invented the procedure was produced, abortion proponents changed their story, claiming the procedure was only done when a women's life was in danger. Then the same doctor, the nation's main practitioner of the technique, was caught—on tape—admitting that 80% of his partial-birth abortions were ''purely elective.''

Then there was the anesthesia myth. The American public was told that it wasn't the abortion that killed the baby, but the anesthesia administered to the mother before the procedure. This claim was immediately and thoroughly denounced by the American Society of Anesthesiologists, which called the claim ''entirely inaccurate.'' Yet Planned Parenthood and its allies continued to spread the myth, causing needless, concern among our pregnant patients who heard the claims and were terrified that epidurals during labor, or anesthesia during needed surgeries, would kill their babies.

The latest baseless statement was made by President Clinton himself when he said that if the mothers who opted for partial-birth abortions had delivered their children naturally, the women's bodies would have been ''eviscerated'' or ''ripped to shreds'' and they ''could never have another baby.''

That claim is totally and completely false. Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a women's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant women's health and her fertility. It seems to have escaped anyone's attention that one of the five women who appeared at Mr. Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Consider the dangers inherent in partial-birth abortion, which usually occurs after the fifth month of pregnancy. A women's cervix is forcibly dilated over several days, which risks creating an ''incompetent cervix,'' the leading cause of premature delivers. It is also an invitation to infection, a major cause of infertility. The abortionist then reaches into the womb to pull a child feet first out of the mother (internal podalic version), but leaves the head inside. Under normal circumstances, physicians avoid breech births whenever possible; in this case, the doctor intentionally causes one—and risks tearing the uterus in the process. He then forces scissors through the base of the baby's skull—which remains lodged just within the birth canal. This is a partially ''blind'' procedure, done by feel, risking direct scissor injury to the uterus and laceration of the cervix or lower uterine segment, resulting in immediate and massive bleeding and the threat of shock or even death to the mother.

None of this risk is ever necessary for any reason. We and many other doctors across the U.S. regularly treat women whose unborn children suffer the same conditions as those cited by the women who appeared at Mr. Clinton's veto ceremony. Never is the partial-birth procedure necessary. Not for hydrocephaly (excessive cerebrospinal fluid in the head), not for polyhydramnios (an excess of amniotic fluid collecting in the women) and not for trisomy (genetic abnormalities characterized by an extra chromosome). Sometimes, as in the case of hydrocephaly, it is first necessary to drain some of the fluid from the baby's head. And in some cases, when vaginal delivery is not possible, a doctor performs a Caesarean section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant.

How telling it is that although Mr. Clinton met with women who claimed to have needed partial-birth abortions on account of these conditions, he has flat-out refused to meet with women who delivered babies with these same conditions, with no damage whatsoever to their health or future fertility.

Former Surgeon General C. Everett Koop was recently asked whether he'd ever operated on children who had any of the disabilities described in this debate. Indeed he had. In fact, one of his patients—''with a huge omphalocele [a sac containing the baby's organs] much bigger than her head''—went on to become the head nurse in his intensive care unit many years later.

Mr. Koop's reaction to the president's veto? ''I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction'' on the matter, he said. Such a procedure, he added, cannot truthfully be called medically necessary for either the mother or—he scarcely need point out—for the baby.

Considering these medical realities, one can only conclude that the women who thought they underwent partial-birth abortions for ''medical'' reasons were tragically misled. And those who purport to speak for women don't seem to care.

So whom are you going to believe? The activist-extremists who refuse to allow a little truth to get in the way of their agenda? The politicians who benefit from the activists' political action committees? Or doctors who have the facts?

[From the National Right to Life Committee, Inc., Tuesday, Sept. 17, 1996]

TWO MAJOR NEWSPAPERS DISCREDIT KEY CLAIMS OF WHITE HOUSE AND OTHER FOES OF PARTIAL-BIRTH ABORTION BAN

WASHINGTON.—The U.S. House of Representatives is scheduled to vote as early as Thursday, September 19, on whether to override President Clinton's veto of a bill to ban partial-birth abortions (except to save a mother's life). This week, two daily newspapers—the Washington Post and the Record of Bergen County, New Jersey—have published investigative reports that discredit false claims by the White House and pro-abortion advocacy groups that partial-birth abortions are ''extremely rate'' and are performed only or mainly in cases of risk to the mother or lethal disorders of the fetus/baby.

The Record's investigative report, titled ''the Facts on Partial-Birth Abortions,'' was written by ''women's issues'' staff writer Ruth Padawer and published on September 15. The Record quoted the insistent claims of pro-abortion advocacy groups that partial-birth procedures are performed in rare and medically dire circumstances, before reporting: ''But interviews with physicians who use the method reveal that in New Jersey alone, at least 1,500 partial-birth abortions are performed each year''—triple the 450–500 number which the National Abortion Federation (NAF), a lobby for abortion clinics, has claimed occur in the entire country.

The Record reported, ''Doctors at Metropolitan Medical in Englewood [New Jersey] estimate that their clinic alone performs 3,000 abortions a year on fetuses between 20 and 24 weeks [i.e., 4½ to 5½ months], of which at least half are intact dilation and evacuation'' [i.e., partial-birth abortion]. The abortion doctors at the Englewood facility ''say only a 'minuscule amount' are for medical reasons,'' the Record reported.

''We have an occasional amnio abnormality, but it's a minuscule amount,'' said one of the doctors at Metropolitan Medical, an assessment confirmed by another doctor there. ''Most are Medicaid patients, black and white, and most are for elective, not medical, reasons: people who didn't realize, or didn't care, how far along they were. Most are teenagers.''

The September 17 edition of the Washington Post contained the results of an investigation conducted by reporters Barbara Vobejda and David M. Brown, M.D., who concluded:

It is possible—and maybe even likely—that the majority of these [partial-birth] abortions are performed on normal fetuses, not on fetuses suffering genetic or other developmental abnormalities. Furthermore, in most cases where the procedure is used, the physical health of the woman whose pregnancy is being terminated is not in jeopardy. . . . Instead, the ''typical'' patients tend to be young, low-income women, often poorly educated or naive, whose reasons for waiting so long to end their pregnancies are rarely medical.

In addition to the abortionists at the Metropolitan Medical facility, the Record learned of at least five other doctors performing partial-birth abortions in the region: ''Another metropolitan area doctor who works outside New Jersey said he does about 260 post-20-week abortions a year, of which half are by intact D&E. The doctor, who is also a professor at two prestigious teaching hospitals, said he has been teaching intact D&E since 1981, and he said he knows of two former students on Long Island and two in New York City who use the procedure.''

Both articles unfairly say that leading supporters of the Partial-Birth Abortion Ban Act have implied that partial-birth abortions are performed primarily during the last three months of pregnancy. In truth, it has been opponents of the bill, including President Clinton, who have tried to narrow the focus of the debate to ''third trimester'' procedures. In contrast, NRLC has publicly and consistently challenged attempts to characterize the bill as a ban on primarily ''third trimester'' procedures, and has stressed that most partial-birth abortions are performed from 20 to 26 weeks—4½ to 6 months—for entirely non-medical reasons. At even 24 weeks, an unborn baby is (on average) 10 inches long, and if born prematurely has a one-in-three chance of survival in a neonatal unit.

[However, it is also well documented that many partial-birth abortions have been performed even after 26 weeks (i.e., during the third trimester), and in a variety of circumstances besides ''severe fetal anomalies.'' Indeed, in a 1995 written submission to the House Judiciary Committee, the late Dr. James McMahon indicated that even at 29–30 weeks, fully one-fourth of the partial-birth abortions that he performed were on fetuses with no ''flaw'' whatever.]

A questionnaire submitted to candidates by the U.S. Catholic Conference, published on September 16, asked, ''What is your position on a law banning partial-birth abortion?'' The Clinton campaign responded: ''If Congress sends the president a bill that bars third-trimester abortions with an appropriate exception for life or health, the president would sign it.'' [emphasis added] By limiting this commitment to ''third-trimester'' abortions, Mr. Clinton's ''restriction'' effectively excludes most partial-birth abortions. Moreover, as the Washington Post reported in its Sept. 17 examination of the issue, the Supreme Court has defined ''health'' abortions to include those performed ''in the light of all factors—physical, emotional, psychological, familial and the woman's age.'' The Post's reporters accurately concluded, ''Because of this definition, life-threatening conditions need not exist in order for a woman to get a third-trimester abortion.'' [Sept. 17 Washington Post Health, page 17]

In an advertisement published today in USA Today and other newspapers, the Physicians' Ad Hoc Coalition for Truth (PHACT), a coalition of about 300 medical specialists including former Surgeon General C. Everett Koop, says emphatically that even in cases involving severe fetal disorders, ''partial-birth abortion is never medically necessary to protect a mother's health or her future fertility.''

The SPEAKER pro tempore (Mr. LAHOOD). All time having expired, without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, the vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 285, nays 137, not voting 12, as follows:

[Roll No. 422]

YEAS—285

Allard	Gephardt	Myrick
Archer	Geren	Neal
Armey	Gilchrest	Nethercutt
Bachus	Gillmor	Neumann
Baesler	Gingrich	Ney
Baker (CA)	Goodlatte	Norwood
Baker (LA)	Goodling	Nussle
Ballenger	Gordon	Oberstar
Barcia	Goss	Obey
Barr	Graham	Ortiz
Barrett (NE)	Greene (UT)	Orton
Barrett (WI)	Gunderson	Oxley
Bartlett	Gutknecht	Packard
Barton	Hall (OH)	Parker
Bass	Hall (TX)	Paxon
Bateman	Hamilton	Payne (VA)
Bereuter	Hancock	Peterson (MN)
Bevill	Hansen	Petri
Bilbray	Hastert	Pombo
Bilirakis	Hastings (WA)	Pomeroy
Bliley	Hayworth	Porter
Blute	Hefley	Portman
Boehner	Hefner	Poshard
Bonilla	Herger	Pryce
Bonior	Hilleary	Quillen
Bono	Hobson	Quinn
Borski	Hoekstra	Radanovich
Brewster	Hoke	Rahall
Browder	Holden	Ramstad
Brownback	Hostettler	Regula
Bryant (TN)	Houghton	Riggs
Bunn	Hunter	Roberts
Bunning	Hutchinson	Roemer
Burr	Hyde	Rogers
Burton	Inglis	Rohrabacher
Buyer	Istook	Ros-Lehtinen
Callahan	Jacobs	Roth
Calvert	Jefferson	Roukema
Camp	Johnson (SD)	Royce
Canady	Johnson, Sam	Salmon
Castle	Jones	Sanford
Chabot	Kanjorski	Saxton
Chambliss	Kaptur	Scarborough
Chenoweth	Kasich	Schaefer
Christensen	Kennedy (RI)	Schiff
Chrysler	Kildee	Seastrand
Clement	Kim	Sensenbrenner
Clinger	King	Shadegg
Coble	Kingston	Shaw
Coburn	Kleczka	Shuster
Collins (GA)	Klink	Sisisky
Combest	Klug	Skeen
Condit	Knollenberg	Skelton
Cooley	LaFalce	Smith (MI)
Costello	LaHood	Smith (NJ)
Cox	Largent	Smith (TX)
Cramer	Latham	Smith (WA)
Crane	LaTourette	Solomon
Crapo	Laughlin	Souder
Cremeans	Lazio	Spence
Cubin	Leach	Spratt
Cunningham	Lewis (CA)	Stearns
Danner	Lewis (KY)	Stenholm
Davis	Lightfoot	Stockman
de la Garza	Linder	Stump
Deal	Lipinski	Stupak
DeLay	Livingston	Talent
Diaz-Balart	LoBiondo	Tanner
Dickey	Lucas	Tate
Dingell	Manton	Tauzin
Doolittle	Manzullo	Taylor (MS)
Dornan	Martinez	Taylor (NC)
Doyle	Martini	Tejeda
Dreier	Mascara	Thomas
Duncan	McCollum	Thornberry
Dunn	McCrery	Tiahrt
Ehlers	McDade	Traficant
Ehrlich	McHale	Upton
English	McHugh	Visclosky
Ensign	McInnis	Volkmer
Everett	McIntosh	Vucanovich
Ewing	McKeon	Walker
Fawell	McNulty	Walsh
Flake	Metcalf	Wamp
Flanagan	Mica	Watts (OK)
Foglietta	Miller (FL)	Weldon (FL)
Foley	Minge	Weldon (PA)
Forbes	Moakley	Weller
Fowler	Molinari	White
Fox	Mollohan	Whitfield
Franks (NJ)	Montgomery	Wicker
Frisa	Moorhead	Wolf
Funderburk	Moran	Young (AK)
Gallegly	Murtha	Young (FL)
Gekas	Myers	Zeliff

NAYS—137

Abercrombie	Frelinghuysen	Owens
Ackerman	Frost	Pallone
Andrews	Gejdenson	Pastor
Baldacci	Gibbons	Payne (NJ)
Becerra	Gilman	Pelosi
Beilenson	Gonzalez	Pickett
Bentsen	Green (TX)	Rangel
Berman	Greenwood	Reed
Bishop	Gutierrez	Richardson
Blumenauer	Harman	Rivers
Boehlert	Hastings (FL)	Rose
Boucher	Hilliard	Roybal-Allard
Brown (CA)	Hinchey	Rush
Brown (FL)	Horn	Sabo
Brown (OH)	Hoyer	Sanders
Bryant (TX)	Jackson (IL)	Sawyer
Campbell	Jackson-Lee (TX)	Schroeder
Cardin	Johnson (CT)	Schumer
Chapman	Johnson, E.B.	Scott
Clay	Kelly	Serrano
Clayton	Kennedy (MA)	Shays
Clyburn	Kennelly	Skaggs
Coleman	Kolbe	Slaughter
Collins (IL)	Lantos	Stark
Collins (MI)	Levin	Stokes
Conyers	Lewis (GA)	Studds
Coyne	Lofgren	Thompson
Cummings	Lowey	Thurman
DeFazio	Luther	Torkildsen
DeLauro	Maloney	Torres
Dellums	Markey	Torricelli
Deutsch	Matsui	Towns
Dixon	McCarthy	Velazquez
Doggett	McDermott	Vento
Dooley	McKinney	Ward
Durbin	Meehan	Waters
Edwards	Meek	Watt (NC)
Engel	Menendez	Waxman
Eshoo	Meyers	Williams
Evans	Millender-McDonald	Wilson
Farr	Miller (CA)	Wise
Fattah	Mink	Woolsey
Fazio	Morella	Wynn
Filner	Nadler	Yates
Ford	Olver	Zimmer
Frank (MA)		
Franks (CT)		

NOT VOTING—12

Dicks	Ganske	Lincoln
Fields (LA)	Hayes	Longley
Fields (TX)	Heineman	Peterson (FL)
Furse	Johnston	Thornton

□ 1414

The Clerk announced the following pairs:

On this vote:

Mr. Hayes and Mr. Ganske for, with Ms. Furse against.

Mr. Longley and Mr. Fields of Texas for, with Mr. Johnston of Florida against.

Mr. DOGGETT changed his vote from ''yea'' to ''nay.''

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will notify the Senate of the action of the House.

□ 1415

PRIVILEGES OF THE HOUSE—RESOLUTION REQUIRING THAT INVESTIGATION INTO MATTERS SURROUNDING COMPLAINT ON REPRESENTATIVE RICHARD GEPHARDT BE ASSIGNED TO SPECIAL COUNSEL

Mr. LINDER. Mr. Speaker, pursuant to notice given earlier this day, under rule IX, I offer a resolution (H. Res. 524) raising a question of the privileges of the House, and I ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 524

Whereas, a complaint filed against Representative GEPHARDT alleges House Rules have been violated by Representative GEPHARDT's concealment of profits gained through a complex series of real estate tax exchanges and;

Whereas, the complaint also alleges possible violations of banking disclosure and campaign finance laws or regulations and;

Whereas, the Committee on Standards of Official Conduct has in complex matters involving complaints hired outside counsel with expertise in tax laws and regulations and;

Whereas, the Committee on Standards of Official Conduct is responsible for determining whether Representative GEPHARDT's financial transactions violated standards of conduct or specific rules of House of Representatives and;

Whereas, the complaint against Representative GEPHARDT has been languishing before the committee for more than seven months and the integrity of the ethics process and the manner in which Members are disciplined is called into question; now be it

Resolved that the Committee on Standards of Official Conduct is authorized and directed to hire a special counsel to assist in the investigation of this matter.

Resolved that all relevant materials presented to, or developed by, the committee to date on the complaint be submitted to a special counsel, for review and recommendation to determine whether the committee should proceed to a preliminary inquiry.

The SPEAKER pro tempore (Mr. LAHOOD). The resolution constitutes a question of privilege under rule IX.

MOTION TO TABLE OFFERED BY MR. ARMEY

Mr. ARMEY. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. ARMEY moves to lay the resolution on the table.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Texas [Mr. ARMEY].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. ARMEY. Mr. Speaker, I demand a recorded vote. A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 395, noes 9, answered ''present'' 10, not voting 19, as follows:

[Roll No. 423]

AYES—395

Abercrombie	Bartlett	Boehlert
Ackerman	Barton	Boehner
Allard	Bass	Bonilla
Andrews	Bateman	Bonior
Archer	Becerra	Bono
Armey	Beilenson	Boucher
Bachus	Bentsen	Brewster
Baesler	Bereuter	Browder
Baker (CA)	Berman	Brown (CA)
Baker (LA)	Bevill	Brown (FL)
Baldacci	Bilbray	Brown (OH)
Ballenger	Bilirakis	Brownback
Barcia	Bishop	Bryant (TN)
Barr	Bliley	Bryant (TX)
Barrett (NE)	Blumenauer	Bunn
Barrett (WI)	Blute	Bunning
Burr	Gordon	Metcalf
Burton	Graham	Mica
Buyer	Green (TX)	Millender-McDonald
Callahan	Greene (UT)	Miller (CA)
Calvert	Greenwood	Miller (FL)
Camp	Gunderson	Minge
Campbell	Gutierrez	Mink
Canady	Gutknecht	Moakley
Castle	Hall (OH)	Molinari
Chabot	Hall (TX)	Mollohan
Chambliss	Hamilton	Montgomery
Chapman	Hancock	Moorhead
Chenoweth	Hansen	Moran
Christensen	Harman	Morella
Chrysler	Hastert	Murtha
Clay	Hastings (FL)	Myers
Clayton	Hastings (WA)	Myrick
Clement	Hayworth	Nadler
Clinger	Hefley	Neal
Clyburn	Hefner	Nethercutt
Coble	Herger	Neumann
Coburn	Hilleary	Ney
Coleman	Hilliard	Norwood
Collins (GA)	Hinchey	Nussle
Collins (IL)	Hoekstra	Oberstar
Collins (MI)	Hoke	Obey
Combest	Horn	Olver
Condit	Hostettler	Ortiz
Costello	Houghton	Orton
Cox	Hoyer	Owens
Coyne	Hunter	Oxley
Cramer	Hutchinson	Packard
Crane	Hyde	Pallone
Crapo	Inglis	Parker
Cremeans	Istook	Pastor
Cubin	Jackson (IL)	Paxon
Cummings	Jackson-Lee (TX)	Payne (NJ)
Cunningham	Jacobs	Payne (VA)
Danner	Jefferson	Peterson (MN)
Davis	Johnson (SD)	Petri
de la Garza	Johnson, E. B.	Pickett
Deal	Johnson, Sam	Pombo
DeFazio	Jones	Pomeroy
DeLauro	Kasich	Porter
DeLay	Kelly	Portman
Dellums	Kennedy (MA)	Poshard
Deutsch	Kennelly	Pryce
Diaz-Balart	Kildee	Radanovich
Dickey	Kim	Rahall
Dingell	King	Ramstad
Dixon	Kingston	Rangel
Doggett	Kleczka	Reed
Dooley	Klug	Regula
Doolittle	Knollenberg	Richardson
Dornan	Kolbe	Riggs
Dreier	LaFalce	Rivers
Duncan	LaHood	Roberts
Dunn	Lantos	Roemer
Durbin	Largent	Rogers
Edwards	Latham	Rohrabacher
Ehlers	LaTourette	Ros-Lehtinen
Ehrlich	Laughlin	Rose
Engel	Lazio	Roth
English	Leach	Roukema
Ensign	Levin	Roybal-Allard
Eshoo	Lewis (CA)	Royce
Evans	Lewis (GA)	Rush
Everett	Lewis (KY)	Sabo
Ewing	Lightfoot	Salmon
Farr	Linder	Sanders
Fattah	Lipinski	Sanford
Fawell	Livingston	Saxton
Fazio	LoBiondo	Scarborough
Filner	Lofgren	Schaefer
Flake	Lowey	Schroeder
Flanagan	Lucas	Schumer
Foglietta	Luther	Scott
Foley	Maloney	Seastrand
Forbes	Manton	Sensenbrenner
Ford	Manzullo	Serrano
Fowler	Markey	Shadegg
Fox	Martinez	Shaw
Frank (MA)	Martini	Shays
Franks (CT)	Mascara	Shuster
Franks (NJ)	Matsui	Sisisky
Frelinghuysen	McCarthy	Skaggs
Frisa	McCollum	Skeen
Frost	McCrery	Skelton
Funderburk	McDade	Slaughter
Gallegly	McHugh	Smith (MI)
Gejdenson	McInnis	Smith (NJ)
Gekas	McIntosh	Smith (TX)
Geren	McKeon	Smith (WA)
Gilchrest	McKinney	Solomon
Gillmor	McNulty	Souder
Gilman	Meehan	Spence
Gonzalez	Meek	Spratt
Goodlatte	Menendez	Stark
Goodling		

Stearns	Torres	Weldon (PA)
Stenholm	Torricelli	Weller
Stokes	Towns	White
Studds	Traficant	Whitfield
Stump	Upton	Wicker
Stupak	Velazquez	Williams
Talent	Vento	Wilson
Tanner	Visclosky	Wise
Tate	Volkmer	Wolf
Tauzin	Vucanovich	Woolsey
Taylor (NC)	Walker	Wynn
Tejeda	Wamp	Yates
Thomas	Ward	Young (AK)
Thompson	Waters	Young (FL)
Thornberry	Watt (NC)	Zeliff
Thurman	Watts (OK)	Zimmer
Tiahrt	Waxman	
Torkildsen	Weldon (FL)	

NOES—9

Doyle	Klink	Quinn
Holden	McDermott	Taylor (MS)
Kanjorski	McHale	Walsh

ANSWERED ''PRESENT''—10

Borski	Goss	Sawyer
Cardin	Hobson	Schiff
Cooley	Johnson (CT)	
Gephardt	Pelosi	

NOT VOTING—19

Conyers	Hayes	Meyers
Dicks	Heineman	Peterson (FL)
Fields (LA)	Johnston	Quillen
Fields (TX)	Kaptur	Stockman
Furse	Kennedy (RI)	Thornton
Ganske	Lincoln	
Gibbons	Longley	

□ 1437

Mr. KLINK changed his vote from ''aye'' to ''no.''

Mrs. MEEK of Florida, Ms. RIVERS, and Messrs. WATT of North Carolina, EVERETT, and DIXON changed their vote from ''no'' to ''aye.''

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 4(b) OF RULE XI REGARDING SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED BY COMMITTEE ON RULES

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–809), on the resolution (H. Res. 525) waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolutions reported from the Committee on Rules, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PRIVILEGES OF THE HOUSE—INSTRUCTING COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO IMMEDIATELY RELEASE OUTSIDE COUNSEL'S REPORT ON SPEAKER GINGRICH

Mr. LEWIS of Georgia. Mr. Speaker, I rise to a question of the privileges of the House, and I offer a resolution pursuant to clause 2 of rule IX.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the resolution.

The Clerk read the resolution, as follows:

Whereas on December 6, 1995, the Committee on Standards of Official Conduct agreed to appoint an outside counsel to conduct an independent, nonpartisan investigation of allegations of ethical misconduct by Speaker NEWT GINGRICH;

Whereas, after an eight-month investigation, that outside counsel has submitted an extensive document containing the results of his inquiry;

Whereas the report of the outside counsel cost the taxpayers $500,000;

Whereas the public has a right—and Members of Congress have a responsibility—to examine the work of the outside counsel and reach an independent judgment concerning the merits of the charges against the Speaker;

Whereas these charges have been before the Ethics Committee for more than two years;

Whereas a failure of the Committee to release the outside counsel's report before the adjournment of the 104th Congress will seriously undermine the credibility of the Ethics Committee and the integrity of the House of Representatives: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct shall immediately release to the public the outside counsel's report on Speaker NEWT GINGRICH, including any conclusions, recommendations, attachments, exhibits or accompanying material.

The SPEAKER pro tempore. The resolution constitutes a question of privilege under rule IX.

MOTION TO TABLE OFFERED BY MR. ARMEY

Mr. ARMEY. Mr. Speaker, in respect for the Committee on Standards of Official Conduct, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. ARMEY moves to lay the resolution on the table.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Texas [Mr. ARMEY].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 225, noes 179, answered ''present'' 10, not voting 19, as follows:

[Roll No. 424]

AYES—225

Allard	Bono	Coble
Archer	Brewster	Coburn
Armey	Brownback	Collins (GA)
Bachus	Bryant (TN)	Combest
Baker (CA)	Bunn	Condit
Baker (LA)	Bunning	Crane
Ballenger	Burr	Crapo
Barr	Burton	Cremeans
Barrett (NE)	Buyer	Cubin
Bartlett	Callahan	Cunningham
Barton	Calvert	Davis
Bass	Camp	Deal
Bateman	Campbell	DeLay
Bereuter	Canady	Diaz-Balart
Bilbray	Castle	Dickey
Bilirakis	Chabot	Doolittle
Bliley	Chambliss	Dornan
Blute	Chenoweth	Dreier
Boehlert	Christensen	Duncan
Boehner	Chrysler	Dunn
Bonilla	Clinger	Ehlers
Ehrlich	Kolbe	Rogers
English	LaHood	Rohrabacher
Ensign	Largent	Ros-Lehtinen
Everett	Latham	Roth
Ewing	LaTourette	Roukema
Fawell	Laughlin	Royce
Flanagan	Lazio	Salmon
Foley	Leach	Sanford
Forbes	Lewis (CA)	Saxton
Fowler	Lewis (KY)	Scarborough
Fox	Lightfoot	Schaefer
Franks (CT)	Linder	Seastrand
Franks (NJ)	Livingston	Sensenbrenner
Frelinghuysen	LoBiondo	Shadegg
Frisa	Lucas	Shaw
Gallegly	Manzullo	Shays
Gekas	Martini	Shuster
Geren	McCollum	Sisisky
Gilchrest	McCrery	Skeen
Gillmor	McDade	Smith (MI)
Gilman	McHugh	Smith (NJ)
Goodlatte	McInnis	Smith (TX)
Goodling	McIntosh	Smith (WA)
Graham	McKeon	Solomon
Greene (UT)	Metcalf	Souder
Greenwood	Meyers	Spence
Gunderson	Mica	Stearns
Gutknecht	Miller (FL)	Stump
Hall (TX)	Molinari	Talent
Hancock	Montgomery	Tate
Hansen	Moorhead	Tauzin
Hastert	Morella	Taylor (NC)
Hastings (WA)	Myers	Thomas
Hayworth	Myrick	Thornberry
Hefley	Nethercutt	Tiahrt
Herger	Neumann	Torkildsen
Hilleary	Ney	Traficant
Hoekstra	Norwood	Upton
Hoke	Nussle	Vucanovich
Horn	Oxley	Walker
Hostettler	Packard	Wamp
Houghton	Parker	Watts (OK)
Hunter	Paxon	Weldon (FL)
Hyde	Peterson (MN)	Weldon (PA)
Inglis	Petri	Weller
Istook	Pombo	White
Johnson, Sam	Porter	Whitfield
Jones	Portman	Wicker
Kasich	Pryce	Wilson
Kelly	Radanovich	Wolf
Kim	Ramstad	Young (AK)
King	Regula	Young (FL)
Kingston	Riggs	Zeliff
Knollenberg	Roberts	Zimmer

NOES—179

Abercrombie	Doyle	Kleczka
Andrews	Durbin	Klink
Baesler	Edwards	Klug
Baldacci	Engel	LaFalce
Barcia	Eshoo	Lantos
Barrett (WI)	Evans	Levin
Becerra	Farr	Lewis (GA)
Beilenson	Fattah	Lipinski
Bentsen	Fazio	Lofgren
Berman	Filner	Lowey
Bevill	Flake	Luther
Bishop	Foglietta	Maloney
Blumenauer	Ford	Manton
Bonior	Frank (MA)	Markey
Boucher	Frost	Martinez
Browder	Gejdenson	Mascara
Brown (CA)	Gibbons	Matsui
Brown (FL)	Gonzalez	McCarthy
Brown (OH)	Gordon	McDermott
Bryant (TX)	Green (TX)	McHale
Chapman	Gutierrez	McKinney
Clay	Hall (OH)	McNulty
Clayton	Hamilton	Meehan
Clement	Harman	Meek
Clyburn	Hastings (FL)	Menendez
Coleman	Hefner	Millender-McDonald
Collins (IL)	Hilliard	Miller (CA)
Collins (MI)	Hinchey	Minge
Conyers	Holden	Mink
Costello	Hoyer	Moakley
Coyne	Hutchinson	Mollohan
Cramer	Jackson (IL)	Moran
Cummings	Jackson-Lee (TX)	Murtha
Danner	Jacobs	Nadler
de la Garza	Jefferson	Neal
DeFazio	Johnson (SD)	Oberstar
DeLauro	Johnson, E. B.	Obey
Dellums	Kanjorski	Olver
Deutsch	Kennedy (MA)	Ortiz
Dingell	Kennedy (RI)	Orton
Dixon	Kennelly	Owens
Doggett	Kildee	Pallone
Dooley		

Pastor	Schroeder	Torricelli
Payne (NJ)	Schumer	Towns
Payne (VA)	Scott	Velazquez
Pickett	Serrano	Vento
Pomeroy	Skaggs	Visclosky
Poshard	Skelton	Volkmer
Quinn	Slaughter	Walsh
Rahall	Spratt	Ward
Rangel	Stenholm	Waters
Reed	Stokes	Watt (NC)
Richardson	Studds	Waxman
Rivers	Stupak	Williams
Roemer	Tanner	Wise
Rose	Taylor (MS)	Woolsey
Roybal-Allard	Tejeda	Wynn
Rush	Thompson	Yates
Sabo	Thurman	
Sanders	Torres	

ANSWERED ''PRESENT''—10

Borski	Goss	Sawyer
Cardin	Hobson	Schiff
Cooley	Johnson (CT)	
Gephardt	Pelosi	

NOT VOTING—19

Ackerman	Ganske	Peterson (FL)
Cox	Hayes	Quillen
Dicks	Heineman	Stark
Fields (LA)	Johnston	Stockman
Fields (TX)	Kaptur	Thornton
Funderburk	Lincoln	
Furse	Longley	

□ 1500

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute.)

Mrs. KENNELLY. Mr. Speaker, I yield to the distinguished majority leader, the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Speaker, I am pleased to announce that the House has finished its work for the week. We will next meet for legislative business on Tuesday, September 24, at 10:30 a.m. for morning hour and noon for legislative business. Votes will be held after 5 p.m. on Tuesday, September 24.

Mr. Speaker, on Tuesday we hope to consider the following measures: Correction day bill H.R. 3153, the Small Business Transport Correction Advancement Act; Correction Day bill H.R. 2988, a bill regarding traffic signal synchronization; a bill to permit same day consideration of rules and to allow suspensions on days other than Monday and Tuesday; and H.R. 3666, the VA/HUD appropriations conference report.

Mr. Speaker, the House will also take up a number of bills under suspension of the rules, a list of which will be distributed to Members' offices tomorrow afternoon.

For Wednesday, September 25 and the balance of the week, we hope to have a number of conference reports ready. Among the possibilities are H.R. 3540, the Foreign Operations Appropriations Act; H.R. 3259, the Intelligence Authorization Act; H.R. 2202, the Immigration in the National Interest Act; and H.R. 3005, the Securities Amendments of 1996.

The House may also consider a fiscal year 1997 omnibus appropriations bill next week.

Mr. Speaker, as we approach the end of the 104th Congress, we brace ourselves for our usual hectic pace. We expect that a number of other measures, both from the other body and from our own committees, may become available. Of course, we will keep Members apprised throughout the week of what might be brought under consideration.

As previously announced, we hope to conclude legislative business and adjourn the 104th Congress sine die on Friday, September 27.

Mr. Speaker, if I might just add, call me optimistic but it is still our hope that we may be able to conclude by that day and that is the target for which we shoot.

I thank the gentlewoman.

Mrs. KENNELLY. Mr. Speaker, should I take from the gentleman's last remarks that Members should not prepare to stay through the weekend next week?

Mr. ARMEY. Mr. Speaker, if the gentlewoman will continue to yield, as I said to my conference yesterday, we are at sine die. These are the end times and there are times of great tribulation. I think the prudent Member might be prepared to work not only Friday but possibly even Saturday next week as we try to clean up the year's final days of business. Again, I think it is always useful to speak in the most optimistic terms, but also to be prepared for the possibility delays keeping us either late Friday night or even into Saturday.

Mrs. KENNELLY. Mr. Speaker, last week in this very same exchange, in this forum, Mr. FAZIO asked you if you might schedule a vote so that we in the House could proclaim our support of the troops in the Iraq situation. The Senate took such a vote on September 5. I wonder, is there any possibility that we might schedule a vote so we, too, could share our support in this House for the troops that are in the Iraq situation?

Mr. ARMEY. Mr. Speaker, if the gentlewoman will continue to yield, I thank the gentlewoman for her inquiry.

If I might just also make a point, if I may just digress for a moment, as I talked about our concerns and hopes with respect to the 27th and/or the 28th, we should also recognize it is altogether possible we would perhaps have to work the following week. Nothing is settled until it is settled.

With respect to the kind of resolution that the gentlewoman has asked about, I have at this point not had any member of any committee, any chairman, approach me with any resolution and any inquiry with respect to placing it on the schedule.

Mrs. KENNELLY. Mr. Speaker, I think what I would hope is that maybe we could just take up the Senate bill.

Mr. ARMEY. Mr. Speaker, I thank the gentlewoman for the suggestion, and I will take it under consideration.

Mr. VOLKMER. Mr. Speaker, will the gentlewoman yield?

Mrs. KENNELLY. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Speaker, the gentleman knows, having been here in the last Congress, we did not do the martial law resolution which we will be doing for this Congress. I do not have any great reservations about it because we used it many times before and I can understand in the closing days you use it.

But there is one part of this one that I have some serious problems with. I would like some assurances that perhaps we could get, depending on the circumstances, perhaps a little more notice. It says in here, ''shall be in order for a time for the remainder of the second session for the Speaker to entertain motions to suspend the rules, provided that the object of a motion is announced from the floor at least 1 hour before the motion is offered.''

Now, my concern about this is, let us say that we are in a recess, and as you know, there will be days toward the end when we will be in suspended recess, maybe for several hours. I would hope that we would make sure that Members have an opportunity, if a bill is brought up through a suspension, which it can be at any time, that at least we have an opportunity, knowing that it is going to be brought at a certain time, we have an opportunity to examine the bill, look at it, have our staff look at it so that we can appraise it before we vote. That is my biggest concern, not that you have the right to do the suspension but that Members could have sufficient time to be prepared to vote on it.

Mr. ARMEY. Mr. Speaker, I think the gentleman makes an important point and a point that I am in agreement with.

Let me just say, one, I would hope that we would not even need to use this authority from the Committee on Rules. Should it become necessary, I think again a primary consideration must be the orderly functioning of the body, and in due respect for the needs of the minority and all Members to be informed as timely as possible for any action pending. I will pledge to the gentleman my personal commitment to do that to the very utmost of my ability.

Mr. VOLKMER. Mr. Speaker, I thank the gentleman.

Mrs. SCHROEDER. Mr. Speaker, will the gentlewoman yield?

Mrs. KENNELLY. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Speaker, this last weekend the Speaker said he had no objection to a bill that some of us have offered, that passed unanimously in the Senate and the President said he would sign. I was wondering if there was any way we could get that to the floor in the last week. That is the bill that would expand the Brady bill so that people who have been convicted of domestic violence offenses could not be able to purchase a gun. I was really pleased to hear the Speaker say he did

not have an objection to it, and was wondering, since it appears to have been cleared and so noncontroversial, could we get it out and could we get it passed?

Mr. ARMEY. Mr. Speaker, I thank the gentlewoman for that inquiry. Let me say, that is on a long list of bills that I hope to pour over, and perhaps we will be able to do so even this afternoon. But at this point I cannot make any comment on that, if for no other reason, out of respect for the other bills that I think Members want. I think it is fair for everybody to know that they had a fair look-see along with the rest.

Mrs. SCHROEDER. Mr. Speaker, I wanted to inquire about the suffragettes who are still in the basement of the rotunda, who have been down there since 1921. I understand that the funding has now been procured privately to raise them up to the first, to the main floor where they are supposed to be. Again, the Senate I guess has unanimously passed this. Would there be any way we could free those women, who have been relegated to the basement since 1921, before we could go home? Do you think we could work that in?

Mr. ARMEY. Mr. Speaker, I thank the gentlewoman for her compelling expression of concern. It would be very difficult for me to do anything but commit to, with all haste, find out more about this situation. I should suspect that perhaps I could begin by checking with the House administration committee, and I will look into it.

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman.

ADJOURNMENT FROM FRIDAY, SEPTEMBER 20, 1996 TO MONDAY, SEPTEMBER 23, 1996

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow, September 20, 1996, it adjourns to meet at noon on Monday next.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Is there objection to the request of the gentleman from Texas?

There was no objection.

HOUR OF MEETING ON TUESDAY, SEPTEMBER 24, 1996

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Monday, September 23, 1996, it adjourns to meet at 10:30 a.m. on Tuesday, September 24, for morning hour debates.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REQUEST TO EXPRESS HOUSE SUPPORT FOR MINNESOTA VIKINGS

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that it be the expression of this House that we favor the Minnesota Vikings over the Green Bay Packers on Sunday.

The SPEAKER pro tempore. The Chair is unable to entertain that request.

Mr. ARMEY. Mr. Speaker, I withdraw my request.

REPORT ON CONTINUING NATIONAL EMERGENCY WITH RESPECT TO ANGOLA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–266)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

I hereby report to the Congress on the developments since March 25, 1996, concerning the national emergency with respect to Angola that was declared in Executive Order 12865 of September 26, 1993. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

On September 26, 1993, I declared a national emergency with respect to Angola, invoking the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and the United Nations Participation Act of 1945 (22 U.S.C. 287c). Consistent with United Nations Security Council Resolution 864, dated September 15, 1993, the order prohibited the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to the territory of Angola other than through designated points of entry. The order also prohibited such sale or supply to the National Union for the Total Independence of Angola (''UNITA''). United States persons are prohibited from activities that promote or are calculated to promote such sales or supplies, or from attempted violations, or from evasion or avoidance or transactions that have the purpose of evasion or avoidance, of the stated prohibitions. The order authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the order.

1. On December 10, 1993, the Secretary of the Treasury's Office of Foreign Assets Control (OFAC) issued the UNITA (Angola) Sanctions Regulations (the ''Regulations'') (58 *Fed. Reg.* 64904) to implement the President's declaration of a national emergency and imposition of sanctions against Angola (UNITA). There have been no amendments to the Regulations since my report of March 25, 1996.

The Regulations prohibit the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to UNITA or to the territory of Angola other than through designated points. United States persons are also prohibited from activities that promote or are calculated to promote such sales or supplies to UNITA or Angola, or from any transaction by any United States persons that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive order. Also prohibited are transactions by United States persons, or involving the use of U.S.-registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited.

The Government of Angola has designated the following points of entry as points in Angola to which the articles otherwise prohibited by the Regulations may be shipped: *Airports:* Luanda and Katumbela, Benguela Province; *Ports:* Luanda and Lobito, Benguela Province; and Namibe, Namibe Province; and *Entry Points:* Malongo, Cabinda Province. Although no specific license is required by the Department of the Treasury for shipments to these designated points of entry (unless the item is destined for UNITA), any such exports remain subject to the licensing requirements of the Departments of State and/or Commerce.

2. The OFAC has worked closely with the U.S. financial community to assure a heightened awareness of the sanctions against UNITA—through the dissemination of publications, seminars, and notices to electronic bulletin boards. This educational effort has resulted in frequent calls from banks to assure that they are not routing funds in violation of these prohibitions. United States exporters have also been notified of the sanctions through a variety of media, including special fliers and computer bulletin board information initiated by OFAC and posted

through the U.S. Department of Commerce and the U.S. Government Printing Office. There have been no license applications under the program.

3. The expenses incurred by the Federal Government in the 6-month period from March 26, 1996, through September 25, 1996, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Angola (UNITA) are reported to be about $227,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Under Secretary for Enforcement, and the Office of the General Counsel) and the Department of State (particularly the Office of Southern African Affairs).

I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 19, 1996.*

□ 1515

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. GOSS] is recognized for 5 minutes.

[Mr. GOSS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia [Mr. WISE] is recognized for 5 minutes.

[Mr. WISE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. WOLF] is recognized for 5 minutes.

[Mr. WOLF addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

A HUGE CLOUD OVER THIS HOUSE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. VOLKMER] is recognized for 5 minutes.

Mr. VOLKMER. Mr. Speaker, we have just been through a little charade here in the House. The last two votes on motions to table were purely what I call a charade as part of the total coverup that is going on in the ethics investigation of our Speaker.

You know, they, majority Republicans, were advised that the minority, the gentleman from Michigan [Mr. BONIOR] and the gentleman from Georgia [Mr. LEWIS], are going to be offering a resolution that would require the Committee on Standards of Official Conduct to make public, to give all Members of the House and the public, the press, a copy of the report that was filed back around August 12 with the Committee on Standards of Official Conduct by the special counsel.

POINT OF ORDER

Mr. WALKER. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. WALKER. Mr. Speaker, the gentleman from Missouri [Mr. VOLKMER] is discussing matters that are not appropriately addressed under the rules of the House.

Mr. VOLKMER. I am just going over what was going on in the House.

The SPEAKER pro tempore. The Chair will sustain the point of order inasmuch as the gentleman may not discuss such matters not currently pending.

Mr. VOLKMER. The Speaker, I am just talking about what went on in the House.

The SPEAKER pro tempore. The gentleman may proceed in order.

Mr. VOLKMER. That is very interesting, very, very interesting that the majority does not even want us to talk about what we just did earlier this afternoon.

When they heard about this resolution that is going to be offered, the gentleman from Georgia, Mr. LINDER—and according to an AP story that was just out today—in an admitted act of retaliation Mr. LINDER introduced a resolution to force the ethics panel to hire an outside counsel to investigate House Minority Leader RICHARD A. GEPHART in an ethics complaint filed 7 months ago that he concealed profits gained through vacation home real estate deals. LINDER says——

POINT OF ORDER

Mr. WALKER. Point of order, Mr. Speaker: The gentleman from Missouri [Mr. VOLKMER] continues to be out of order.

The SPEAKER pro tempore. The Chair will sustain the point of order and share at this point the ruling of November 17, 1995:

The prohibition against references in the debate to the official conduct of other Members where such conduct is not under consideration in the House includes reciting the content of a resolution raising a question of the privileges of the House which is no longer pending, having been tabled by the House.

The gentleman may proceed in order.

Mr. VOLKMER. Now the gentleman from Georgia [Mr. LINDER] goes on and says that the Lewis resolution reflected an ongoing and desperate action with a small band of Democrats who refused the ethics process by filing one baseless claim after another.

Now those claims are not baseless, those claims are legitimate. They are based on acts that were performed by the Speaker and that have been filed with complaints, and part of those complaints were investigated by the special counsel, and the special counsel filed the report way back over a month ago. But none of us have seen the report, none of us can get a copy of the report, and on the tabling motion there is no question——

POINT OF ORDER

Mr. WALKER. Mr. Speaker, the gentleman continues to be out of order, and it is an embarrassment to the House to have the gentleman continue to disobey the rules knowingly and completely with malice.

The SPEAKER pro tempore. The Chair sustains the point of order and requests that the gentleman proceed in order as indicated by the Chair earlier.

Mr. VOLKMER. Mr. Speaker, you know, there is a huge cloud over this House, and it has been here for over a year, almost 2 years, and it is all because of inaction of the Committee on Standards of Official Conduct on the complaints on NEWT GINGRICH, and it has brought discredit on this House.

POINT OF ORDER

Mr. WALKER. Point of order Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. WALKER. The gentleman is obviously attempting to simply disobey the rules, and the gentleman obviously has no comport to the Oath of Office that he took earlier in this Congress and, you know, is embarrassing the House with his present disobeying of the rules, and I insist on my point of order.

The SPEAKER pro tempore. The point of order by the gentleman is sustained, and the Chair would remind the gentleman from Missouri that he may not speak to matters which are now under consideration by the Committee on Standards of Official Conduct or to the motivation of Members who bring questions before the House.

Mr. VOLKMER. I appreciate the ruling of the Chair, and it is very apparent to me and, I hope, to Members of this House that the majority does not want any of the minority, anybody, talking about ethics questions on the floor of the House. They just do not want us to discuss it. They want to keep it secret, they do not want anybody to know anything about it, they want it all to go away until after the election.

Well, there are those of us who feel that we in this House of Representatives, which has been a stalwart in the world as far as democracy is concerned, have a right to voice our opinion on the floor of the House on this subject because we feel that this subject is one that has to do with the image of the people, how the people look at the United States House of Representatives.

I do not think that the public really appreciates a House of Representatives

where Members cannot even discuss on the floor those things—I can walk right out in that hall, I can go up into the press gallery, I can go up the steps and go back in my district, I could do it in my home, I could do it in my office, I can do it anyplace else. I can discuss all the problems that the Committee on Standards of Official Conduct has and NEWT GINGRICH has and the fact that the chairman of the Committee on Standards of Official Conduct has just stalled this whole process. I can do it all there, but I cannot do it here.

That is the ruling of the Chair. They do not want me to say it, folks. They do not want me to talk about it.

But guess what? We are going to continue to do it until that report is released to the public. They paid $500,000, Mr. Speaker, for that report, and they are keeping it quiet.

POINT OF ORDER

Mr. WALKER. Point of order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. WALKER. The gentleman continues to be out of order.

The SPEAKER pro tempore. The Chair sustains the point of order.

Mr. VOLKMER. Would the gentleman from Pennsylvania like to take down my words?

The SPEAKER pro tempore. The Chair would remind the gentleman that Speakers in prior Congresses have also supported these rulings.

The gentleman from Missouri [Mr. VOLKMER] may proceed in order.

Mr. VOLKMER. Mr. Speaker, I would just like to continue to say that it is just not me that is being gagged, it is everbody out in the public, the media, everybody else in this whole country. Nobody knows what is in that report, and you are never going to know what is in that report because they are not going to let you have it.

REGARDING THE RULES OF THE HOUSE

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, what we have just seen is an act that everyone in the House should be concerned about because the rules of this House exist in large part to assure the civility of the proceedings of the House. They exist to try to make certain that all Members are protected and have certain rights.

These rules are not unique to this Congress. These are rules that the gentleman from Missouri [Mr. VOLKMER] regularly voted for when he was a Member of the majority. The rules with regard to discussion of matters before the Committee on Standards of Official Conduct on this House floor have been the heart of the rules for a long time. They are not something that this majority came up with. They are in fact the same rules that previous Speakers have enforced and have been in place for the previous Congresses.

All Members have an obligation to those rules. When Members think that they are above the law and above the rules, that is an embarrassment, and that destroys the underlying civility that needs to govern our processes here.

I do not know how we can, as a nation, solve the myriad of problems that we have if some Members take it upon themselves to disobey the rules. That is what we have seen happening on a regular basis.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 5 minutes.

[Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. BILIRAKIS] is recognized for 5 minutes.

[Mr. BILIRAKIS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. MORELLA] is recognized for 5 minutes.

[Mrs. MORELLA addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. CHRISTENSEN] is recognized for 5 minutes.

[Mr. CHRISTENSEN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BUYER] is recognized for 5 minutes.

[Mr. BUYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

UNITED STATES MUST GET ITS INTERNATIONAL TRADE FUNCTIONS IN ORDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. MICA] is recognized for 5 minutes.

Mr. MICA. Mr. Speaker, I was just on the floor a few days ago and talked about a headline I saw where the trade deficit last month had gotten worse, and today I woke up to see today's news, and trade and jobs and opportunity for my children and for the future of all citizens of our country have been one of my top priorities since I got elected some 3 years ago.

Today I saw a headline that should send chills into the spine of every American and every Member of Congress. It says ''U.S. trade gap grew by 43 percent in July.''

Now if that does not knock your socks off and you are not concerned about this, then you are not awake.

The opportunities that we are destroying for our children by not getting our international trade functions in order are going to really ruin the future again for our children. Let me show you our current international trade organization.

This is 19 agencies deal with promoting, financing assistance for international trade. This is the current structure. It is a rat's maze. Any business person who could get Federal assistance from this rat's maze and have Government cooperate with business and industry so we could provide good paying jobs, they cannot do it under this structure.

When I first came to Congress, I introduced a reorganization that would put trade finance, trade promotion and trade assistance all together in a sound, reasonable package to provide assistance to give us an opportunity to increase our jobs.

Now look at what Mr. Kantor, our Secretary of Commerce, former Trade Representative said. His comment was ''The U.S. trade picture reflects the underlying strength of the U.S. economy.''

I cannot believe that he said anything. In fact, I pulled his bio to see if he had any business experience, and he does not. Neither does the gentleman who currently occupies the White House. They just do not understand at 1600 Pennsylvania Avenue, they do not understand in the Department of Commerce, and they do not understand in the trade agency or the 19 other Federal agencies that spend $3 billion in tax money.

Then you read about where the big trade deficit is. It is in Japan. Now where does 85 percent of all that money we that we spend promoting U.S. products, assisting U.S. companies go? It goes for, and would you believe this, it does for promoting raisins in Japan, and we already control the market there.

So you see why our children do not have an opportunity for the future. This is the disorganization, these are the comments, this is the statistics.

□ 1530

We heard about 10 million new jobs in this country. Where are those 10 million new jobs? They are part time, they are low paying, they are service jobs. They do not tell us that between 1993 and 1995 we lost 8.4 million good-paying jobs in this country. People were fired. They were fired in Binghamton, NY, they were fired in Tennessee, they were fired in Florida. They lost their jobs, and a majority of those 8.4 million people had to take lower paying jobs.

So the 10 million jobs, people I talked to in my district have two or three of

them to make a living. So they have destroyed jobs. They killed the bridge to the future because they killed our bill to reorganize trade.

I worked with the gentleman form Michigan [Mr. CHRYSLER], a hero of this Congress, and others who tried to bring some business sense to our international trade effort, and they have destroyed that bridge. Maybe Mr. Canter is smiling today, because he helped destroy a bridge to the future, a bridge to good-paying jobs, a bridge to increase the median income of the average American. That median income has gone down. That is why Americans have less in their pockets today, because taxes went up, because this Congress will not address the problem of overregulation. One hundred thirty-two thousand Federal employees do nothing but regulate, so we take those jobs out of New York, Pennsylvania, California, Florida, and we send them across the border.

Finally, litigation. This administration vetoed litigation reform. When you sue everybody, what do you do? You send business and industry and good-paying jobs out of this country, so they have destroyed the bridge to the future for my children, for your children. They have relegated us to $5.15 an hour jobs. In my State, for not working, on welfare you get the equivalent of $8.75 for not working, and you get health coverage. So why work? You have to be dumb to work at $5.15, which they are promoting.

I urge my colleagues to look at this. Let us build bridges to the future, not destroy them.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Under a previous order of the House, the gentleman from Florida [Mr. SCARBOROUGH] is recognized for 5 minutes.

[Mr. SCARBOROUGH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. TALENT] is recognized for 5 minutes.

[Mr. TALENT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

ENVIRONMENTAL ARROGANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Utah [Mr. HANSEN] is recognized for 5 minutes.

Mr. HANSEN. Mr. Speaker, I chair the Subcommittee on National Parks, Forests and Lands. In the early 1970's, Congress passed a law called the National Environmental Protection Act, and in 1976, the FLPMA Act on other areas that would take care of the public lands. We determined there that anything that happened on public lands, that the public would have some input on it. They would have the opportunity to have hearings; anybody, they would have the opportunity to challenge what the Government did, so it would be adequately done without some high-handed individual coming along and shoving something down the throat of the population.

That was probably a pretty good piece of legislation. I mentioned, I chair the subcommittee, and every time we have a bill, and, Mr. Speaker, we have probably had more hearings than any other subcommittee on the Hill, the administration comes up. Here comes the BLM, here comes the Forest Service, here comes in Department of Reclamation. They say, ''Mr. Chairman, there has to be more public input on this bill. We have to have more time for the public to have due process on this bill. You have got to be here and listen to these things.''

I agree with most of that. People should have input. In the little State of Utah that I represent, as two other Members represent, we have some beautiful areas. We have six national monuments and a number of national parks. We have Arches, Canyonlands, Bryce, Zion, a piece of the Grand Canyon; we have some beautiful areas. Out of that, it seems like my friends from the East always want to come out and tell us how to determine our own lives.

Surprisingly enough, yesterday the President of the United States stood on the south rim of the Grand Canyon and announced a national monument in Utah of 2 million acres, 2 million acres. That is the size of Delaware. That is the size of Yellowstone National Park.

Lo and behold, guess who he told about it? Absolutely no one. The Governor of the State was not made aware, the two Senators were not made aware, the Members of the House, including of his own party, were not made aware. The President of the Senate and the Speaker of the House, the legislature, and the county commissioners, nobody was told except President Clinton decided he wanted to do it.

This particular area has the largest coal reserve there is in the history, anywhere we can find in America. There is enough coal in the ground for the energy of Utah for 1,000 years, low-sulfur coal, which can be mined environmentally sound. In this area happens to be 10 cities; the first time that I know of that 10 cities now find themselves in a national park with the stroke of a pen.

How did he get the right to use that pen? He got the right because of the antiquated Antiquities Act of 1906, which said the President could preserve and protect Indian ruins. That was the theory behind it, Indian ruins; not saying you could go create things bigger than about every park, bigger than a lot of States. No, that was not the idea.

But the extreme environmental community, who wants to kill our timber, wants to kill our mining, wants to keep people from going into the wilderness and enjoying it and fishing, hunting, standing there and looking at God's beauty, no, we do not get to do that, because the President of the United States, in his great, wonderful, awesome wisdom, greater than anybody, he had the right to say this beautiful area should be reserved.

Let me ask something, has the President been there? Has the President seen it? No, the President does not even know where it is. He could not come within 500 miles of it if you put a map down in front of him. That does stop him from coming in and signing the Antiquities law and saying, let us take care of this. Does that smack anybody of being political, considering that the environmental community is putting millions of dollars in this reelection? Does that smack anybody of that at all? Why did he not just wait? Why did he not wait until after, sitting down as we have down with every other park and national monument in the history of the State, in the history of the United States, and say, let us work this out?

No, I have never, in 26 years as an elected official, as past Speaker of the House of the State of Utah, I have never seen such arrogance in my life. I am totally disappointed in what happened.

What will this cost of the children of Utah? One billion dollars, $1 billion they are not going to get for education. What is this going to cost the little State of Utah, the Governor and his legislature? Six and one-half billion dollars. Tell me why? What is the reason behind this? I am really disappointed at this high-handed attitude that emanates from the White House. I surely think that the people of the West have just been written off.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

[Mr. SMITH of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING CURRENT LEVELS OF SPENDING AND REVENUES REFLECTING ACTION COMPLETED AS OF SEPTEMBER 12, 1996 FOR FISCAL YEARS 1997–2001

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. KASICH] is recognized for 5 minutes.

Mr. KASICH. Mr. Speaker, on behalf of the Committee on the Budget and pursuant to sections 302 and 311 of the Congressional Budget Act, I am submitting for printing in the CONGRESSIONAL RECORD an updated report on the current levels of on-budget spending and revenues for fiscal year 1997 and for the 5-year period fiscal year 1997 through fiscal year 2001.

This report is to be used in applying the fiscal year 1997 budget resolution (H. Con. Res.

178), for legislation having spending or revenue effects in fiscal years 1997 through 2001.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, September 17, 1996.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: To facilitate application of sections 302 and 311 of the Congressional Budget Act, I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 1997 and for the 5-year period fiscal year 1997 through fiscal year 2001.

The term ''current level'' refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature as of September 12, 1996.

The first table in the report compares the current level of total budget authority, outlays, and revenues with the aggregate levels set by H. Con. Res. 178, the concurrent resolution on the budget for fiscal year 1997. These levels are consistent with the recent revisions made pursuant to section 606(e) of the Congressional Budget Act of 1974 as amended by the Contract with America Advancement Act (P.L. 104–121) which provides additional new budget authority and outlays to pay for continuing disability reviews. This comparison is needed to implement section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for years after fiscal year 1997 because appropriations for those years have not yet been considered.

The second table compares the current levels of budget authority, outlays, and new entitlement authority of each direct spending committee with the ''section 602(a)'' allocations for discretionary action made under H. Con. Res. 178 for fiscal year 1997 and for fiscal years 1997 through 2001. ''Discretionary action'' refers to legislation enacted after adoption of the budget resolution. This comparison is needed to implement section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 602(a) discretionary action allocation of new budget authority or entitlement authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocations from the point of order under section 311(a).

The third table compares the current levels of discretionary appropriations for fiscal year 1997 with the revised ''section 602(b)'' suballocations of discretionary budget authority and outlays among Appropriations subcommittees. This comparison is also needed to implement section 302(f) of the Budget Act, because the point of order under that section also applies to measures that would breach the applicable section 602(b) suballocation. The revised section 602(b) suballocations were filed by the Appropriations Committee on July 12, 1996.

Sincerely,

JOHN R. KASICH, *Chairman.*

Enclosures.

STATUS OF THE FISCAL YEAR 1997 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 178—REFLECTING ACTION COMPLETED AS OF SEPT. 12, 1996

[On-budget amounts, in millions of dollars]

	Fiscal year 1997	Fiscal year 1997–2001
Appropriate level (as set by H. Con. Res. 178):		
Budget authority	1,314,785	6,956,907
Outlays	1,311,171	6,898,627
Revenues	1,083,728	5,913,303
Current level:		
Budget authority	856,941	(1)
Outlays	1,037,292	(1)
Revenues	1,101,569	5,973,380
Current level over (+)/under (−) appropriate level:		
Budget authority	−457,844	(1)
Outlays	−273,879	(1)
Revenues	17,841	60,077

[1] Not applicable because annual appropriations acts for fiscal years 1997 through 2000 will not be considered until future sessions of Congress.

BUDGET AUTHORITY

Enactment of measures providing any new budget authority for FY 1997 in excess of $457,844,000,000 (if not already included in the current level estimate) would cause FY 1997 budget authority to exceed the appropriate level set by H. Con. Res. 178.

OUTLAYS

Enactment of measures providing any new budget or entitlement authority that would increase FY 1997 outlays in excess of $273,879,000,000 (if not already included in the current level estimate) would cause FY 1997 outlays to exceed the appropriate level set by H. Con. Res. 178.

REVENUES

Enactment of any measure that would result in any revenue loss in excess of $17,841,000,000 for FY 1997 (if not already included in the current level estimate) or in excess of $60,077,000,000 for FY 1997 through 2001 (if not already included in the current level) would increase the amount by which revenues are less than the recommended levels of revenue set by H. Con. Res. 178.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH COMMITTEE ALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(a) REFLECTING ACTION COMPLETED AS OF SEPT. 12, 1996

[Fiscal years, in millions of dollars]

	1997			1997–2001		
	Budget authority	Outlays	New entitlement authority	Budget authority	Outlays	New entitlement authority
House Committee:						
Agriculture:						
Allocation	0	0	0	0	0	4,996
Current level	5	5	5	55	55	55
Difference	5	5	5	55	55	−4,941
National Security:						
Allocation	−1,579	−1,579	0	−664	−664	0
Current level	−102	−102	−21	−289	−289	−34
Difference	1,477	1,477	−21	375	375	−34
Banking, Finance and Urban Affairs:						
Allocation	−128	−3,700	0	−711	−4,004	0
Current level	0	0	0	0	0	0
Difference	128	3,700	0	711	4,004	0
Economic and Educational Opportunities:						
Allocation	−912	−800	−152	−3,465	−3,153	7,669
Current level	1,967	1,635	1,816	11,135	10,296	8,852
Difference	2,879	2,435	1,968	14,600	13,449	1,183
Commerce:						
Allocation	0	0	370	−14,540	−14,540	−41,710
Current level	0	0	500	200	153	1,470
Difference	0	0	130	14,740	14,693	43,180
International Relations:						
Allocation	0	0	0	0	0	0
Current level	−1	−1	0	−1	−1	0
Difference	−1	−1	0	−1	−1	0
Government Reform and Oversight:						
Allocation	−1,078	−1,078	−289	−4,605	−4,605	−1,668
Current level	0	0	0	0	0	0
Difference	1,078	1,078	289	4,605	4,605	1,668
House Oversight:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Resources:						
Allocation	−91	−90	−12	−1,401	−1,460	−59
Current level	−2	−2	1	−30	−30	9
Difference	89	88	13	1,371	1,430	68
Judiciary:						
Allocation	0	0	0	−357	−357	0
Current level	0	0	0	3	3	3
Difference	0	0	0	360	360	3
Transportation and Infrastructure:						
Allocation	2,280	0	0	125,989	521	2
Current level	0	0	0	0	0	0
Difference	−2,280	0	0	−125,989	−521	−2
Science:						
Allocation	0	0	0	−13	−13	0

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH COMMITTEE ALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(a) REFLECTING ACTION COMPLETED AS OF SEPT. 12, 1996—Continued

[Fiscal years, in millions of dollars]

	1997			1997–2001		
	Budget authority	Outlays	New entitlement authority	Budget authority	Outlays	New entitlement authority
Current level	0	0	0	0	0	0
Difference	0	0	0	13	13	0
Small Business:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Veterans' Affairs:						
Allocation	−90	−90	224	−919	−919	3,475
Current level	0	0	0	0	0	0
Difference	90	90	−224	919	919	−3,475
Ways and Means:						
Allocation	−8,973	−9,132	−2,057	−134,211	−134,618	−10,743
Current level	8,337	8,301	−2,840	73,452	73,471	−38,717
Difference	17,310	17,433	−783	207,663	208,089	−27,974
Unassigned:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Total authorized:						
Allocation	−10,571	−16,469	−1,916	−34,897	−163,812	−38,038
Current level	10,204	9,836	−539	84,525	83,658	−28,362
Difference	20,775	26,305	1,377	119,422	247,470	9,676

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 1997—COMPARISON OF CURRENT LEVEL WITH SUBALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(b)

[In millions of dollars]

	Revised 602(b) suballocations (July 12, 1996)				Current level reflecting action completed as of Sept. 12, 1996				Difference			
	General purpose		Violent crime		General purpose		Violent crime		General purpose		Violent crime	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Agriculture, Rural Development	12,960	13,380	0	0	12,960	13,340	0	0	0	40	0	0
Commerce, Justice, State	24,493	24,939	4,525	2,951	16	6,451	0	1,477	24,477	18,488	4,525	1,474
Defense	245,065	243,372	0	0	0	80,745	0	0	245,065	162,627	0	0
District of Columbia	719	719	0	0	719	719	0	0	0	0	0	0
Energy & Water Development	19,421	19,652	0	0	0	6,833	0	0	19,421	12,819	0	0
Foreign Operations	11,950	13,311	0	0	72	8,253	0	0	11,878	5,058	0	0
Interior	12,118	12,920	0	0	138	4,855	0	0	11,980	8,065	0	0
Labor, HHS and Education	65,625	69,602	61	38	1,858	40,615	0	20	63,767	28,987	61	18
Legislative Branch	2,180	2,148	0	0	2,166	2,131	0	0	14	17	0	0
Military Construction	9,983	10,360	0	0	9,982	10,344	0	0	1	16	0	0
Transportation	12,190	35,453	0	0	0	23,785	0	0	12,190	11,668	0	0
Treasury-Postal Service	11,016	10,971	97	84	0	2,381	0	9	11,016	8,590	97	75
VA–HUD-Independent Agencies	64,354	78,803	0	0	365	47,492	0	0	63,989	31,311	0	0
Reserve	618	69	0	0	0	0	0	0	618	69	0	0
Grand total	492,692	535,699	4,683	3,073	28,276	247,944	0	1,506	464,416	287,755	4,683	1,567

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 17, 1996.

Hon. JOHN KASICH,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the on-budget current levels of new budget authority, estimated outlays, and estimated revenues for fiscal year 1997. These estimates are compared to the appropriate levels for those items contained in the 1997 Concurrent Resolution on the Budget (H. Con. Res. 178) and are current through September 12, 1996. A summary of this tabulation follows:

[In millions of dollars]

	House current level	Budget resolution (H. Con. Res. 178)	Current level +/− resolution
Budget authority	856,941	1,314,785	−457,844
Outlays	1,037,292	1,311,171	−273,879
Revenues			
1997	1,101,569	1,083,728	+17,841
1997–2001	5,973,380	5,913,303	+60,077

Since my last report, dated July 22, 1996, the Congress has cleared and the President has signed the Agriculture Appropriations Act (P.L. 104–180), the District of Columbia Appropriations Act (P.L. 104–194), the Federal Oil & Gas Royalty Simplifications & Fairness Act of 1996 (P.L. 104–185), the Small Business Job Protection Act of 1996 (P.L. 104–188), an Act to Authorize Voluntary Separation Incentives at A.I.D. (P.L. 104–190), the Health Insurance Portability and Accountability Act of 1996 (P.L. 104–191), and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193). The Congress has also cleared for the President's signature the Military Construction Appropriations Act (H.R. 3517), the Legislative Branch Appropriations Act (H.R. 3754), and the National Defense Authorization Act (H.R. 3230). These actions changed the current level of budget authority, outlays, and revenues.

Sincerely,

JUNE E. O'NEILL,
Director.

PARLIAMENTARIAN STATUS REPORT—104TH CONGRESS 2D SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1997, AS OF CLOSE OF BUSINESS SEPTEMBER 12, 1996

[In millions of dollars]

	Budget authority	Outlays	Revenues
PREVIOUSLY ENACTED			
Revenues			1,100,355
Permanents and other spending legislation	843,212	804,226	
Appropriation legislation		238,523	
Offsetting receipts	−199,772	−199,772	
Total previously enacted	643,440	842,977	1,100,355
ENACTED THIS SESSION			
Appropriations Bills:			
Agricultural Appropriations (P.L. 104–180)	52,345	44,922	
District of Columbia Appropriations (P.L. 104–194)	719	719	
Authorizations Bill:			
Taxpayer Bill of Rights 2 (P.L. 104–168			−15
Federal Oil & Gas Royalty Simplification & Fairness Act of 1996 (P.L. 104–185)	1	1	

PARLIAMENTARIAN STATUS REPORT—104TH CONGRESS 2D SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1997, AS OF CLOSE OF BUSINESS SEPTEMBER 12, 1996—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Offsetting Receipts	−3	−3	
Small Business Job Protection Act of 1996 (P.L. 104–188)	−76	−76	579
An Act to Authorize Voluntary Separation Incentives at the A.I.D. (P.L. 104–190)	−1	−1	
Health Insurance Portability & Accountability Act of 1996 (P.L. 104–191)	305	315	590
Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)	10,080	9,702	60
Total enacted this session	63,370	55,579	1,214
PASSED PENDING SIGNATURE			
Military Construction Appropriations (H.R. 3517)	9,982	3,140	
Legislative Branch Appropriations (H.R. 3754)	2,166	1,917	
National Defense Authorization Act (H.R. 3230)	−102	−102	
Total passed pending signature	12,046	4,955	
APPROPRIATED ENTITLEMENTS AND MANDATORIES			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	138,085	133,781	
Total Current Level [1]	856,941	1,037,292	1,101,569
Total Budget Resolution	1,314,785	1,311,171	1,083,728
Amount remaining:			
Under Budget Resolution	457,844	273,879	
Over Budget Resolution			−17,841

[1] In accordance with the Budget Enforcement Act, the total does not include $34 million in outlays for funding of emergencies that have been designated as such by the President and the Congress.

THE INCREASE IN ILLEGAL DRUG USE AMONG TEENAGERS IN AMERICA

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Ohio [Mr. PORTMAN] is recognized for 60 minutes as the designee of the majority leader.

Mr. PORTMAN. Mr. Speaker, today I would like to take a few minutes to talk about the drug crisis in America, the problem we are faced with, some of the reasons for it, and at least one very good idea to address the problem.

I have devoted a lot of my time and my staff's time over the last year and a half on this issue, because I am convinced that our national leaders must take tangible steps to help communities across our country to send a clear and consistent message at every level that drugs are wrong and that they are dangerous. If we do not, I believe our society will be in real trouble.

It is not just about drug abuse, as I will explain later with the chart, because drug abuse impacts a whole host of other social problems we face in this country. I am actually encouraged by the recent press attention we see on this issue. This chart shows that in fact the headlines are starting to appear, people are starting to pay attention to the fact that we do, once again, have what is becoming a drug epidemic in this country. Though politics are certainly playing a role in it, I am glad the President is finally talking about this issue. I am glad that he has appointed a real leader, Gen. Barry McCaffrey, to be his new drug czar.

But so much more needs to be done. I have three children of my own. I know that what influences their decisions, what shapes their attitudes, is what my wife and I say, what we do, what their teachers tell them, what they hear in church, what they see on television, what they hear on the radio, what their friends tell them. We need to work together to fashion innovative solutions to this terrible drug problem in this country that will actually make a difference in the lives of my kids and all of our children.

This is why I have spent the last year and a half working with people in the field, those who have devoted literally decades to this issue, to reducing substance abuse, activists back home like Jackie Butler, Hope Taft, Tammy Sullivan; people at the State level, including my Governor, George Voinovich and his director of Alcohol and Drug Addiction Services, Lucille Fleming; people at the national level like Jim Burke, Tom Hedrick, with the Partnership for a Drug Free America, Jim Koppel of CADCA, Bill Oliver, Doug Hall of PRIDE, and many others.

We have also spent a lot of time talking to kids and parents, teachers and coaches, religious leaders, business people, and many others about the problem at the local level, and what we should do about it.

Two clear things have emerged. First, national leadership is important. It is critical. It keeps the issue on the agenda, it keeps it in the media, as we see here, and helps send a clear and consistent message that has a direct impact on the use of drugs.

The research could not be clearer on this issue. As important as national leadership, of course, is sustained national leadership, not on again-off again.

The second thing we have learned is that leadership must recognize that this problem is probably best addressed at the community level, at the local level. We need everyone who influences the decision of a child to be involved: The parents, the coaches, the teachers, our President, Members of Congress, community leaders, kids themselves. Until we understand that leadership has to be used to mobilize at each of these levels, I do not think we will ever adequately address the problem.

Mr. Speaker, the community anti-drug coalition initiative that we have started here in the Congress, that has been spreading around the country for the last few years, is one attempt to bring sustained national leadership where we will have the most impact.

Alex de Tocqueville, when he visited this country over a century ago, he tried to describe America to people in Europe. One thing he said was, ''All of the efforts and resources of the citizens'', the citizens of America, ''are turned to the eternal well-being of the community.''

I think that is a pretty good observation. I think it continues to be true today, the recognition that people's energies are often devoted primarily at their neighborhoods and at their communities, where they feel they can have the most direct impact. I think that tells us a lot where we as Members of Congress ought to be devoting some of our energies, at the community level.

Drugs are a serious concern among all Americans. If you look at the most recent Gallup Poll results, or you look at the most recent Wall Street Journal NBC Poll, it is clear drugs and crimes are the number one issue most Americans believe we must address. It is also interesting when you ask parents what the most serious problem is facing our youth, they say drug abuse.

As interesting, when you ask kids themselves, when you ask our young people, what is the most serious concern you face, and this is teenagers, they do not say it is getting a job, they do not say it is their education. What do they say? Drugs. So kids themselves and their parents have recognized that. Frankly, I think they are far out in front of their elected leaders.

Just how big is this problem? to try to put it in some perspective, I will say that in just over a generation, the use of illegal drugs in this country has increased 40-fold, 40-fold. It is a huge problem. As I said earlier, it is not just about drug abuse, because drug abuse affects so many other things in this country.

Let me give the Members just a few examples on this chart. Crime and violence; over half of the violent crime

committed in America today is directly related to illegal drug use. School dropouts; kids that use drugs are 2 to 5 times more likely to drop out of school. Health care costs; fully a quarter of our trillion dollar health care cost in this country is directly related to substance abuse. More than half of the new HIV cases are illegal drug related. Spousal and child abuse; again, data will show us that about half of the family abuse in this country is directly related to substance abuse.

Finally, productivity. Yes, it affects American businesses. Because of absenteeism, increased medical claims, businesses in America take a $60 billion hit every year, $60 billion, just because of illegal drugs. If you add alcohol abuse to that, it is another $80 billion a year.

□ 1545

This is an issue that affects all of us.

This next chart I want to show is actually a hopeful one because it shows that we are not powerless to solve this problem. In fact, from 1979 until 1992, we saw a substantial decrease in the use of drugs. This chart will show that, among teenagers, we saw over a 70-percent decrease during that period.

Folks love to ridicule the Just Say No campaign. This is when it was in its heyday. It works. It works in concert with a lot of other things. A clear and consistent message from the White House on down is effective in reducing drug abuse.

The chart also shows, of course, that since 1992, there has been a sharp increase. Unfortunately, everything we know leads us to believe that that line, if anything, is increasing even more sharply. The tragedy is that it is among our younger and younger kids, too.

We have found, particularly with regard to marijuana use, the most dramatic increases are among our young people. Look at this. Among 8th graders, we see a 167-percent increase from 1991 to 1995. That means in a typical 8th grade class in America, 25 kids, 5 of them in the 8th grade have used marijuana.

All of the other drugs are also increasing, whether it is inhalants, whether it is stimulants, and here is a chart on stimulants which would be cocaine, amphetamines, methamphetamine. Look at these increases, 8th, 10th and 12th graders, the use of cocaine and other stimulants.

Some people who grew up in the 1960's might say, ''Well, what's the big deal about some of these drugs increasing?'' Well, look at this. LSD is now at record levels. This is record levels of LSD used in this country, again, 8th, 10th and 12th graders.

Some people will say, ''Marijuana is not that big a deal. Yes, these other drugs concern me.'' Well, marijuana today is about 2 to 5 times stronger than it was back in the 1970's. Also, we know a lot more today about marijuana. We know, for example, that marijuana does in fact impair judgment, it does impair learning, it does keep kids from reaching their potential. It is also a powerful gateway to other drugs.

So you might ask, there is the problem; why is it occurring? Well, it is a complicated issue in some respects, but in other ways, it is not at all. This is very good research, well documented by the University of Michigan. Lloyd Johnson, every year with Monitoring the Future, does this study and it is widely accepted in the field as being very accurate and helpful. What does it show?

It shows, among other things, that drug use is not related so much to how much somebody makes, how much their parents make, what their race is, where they live, suburbs or urban areas. What it really relates to is their attitudes about drugs.

Look at the incredible correlation here between social disapproval, a sense that a teenager has of social disapproval and the use of drugs. As disapproval goes up, and you can see, between 1979 and 1992, it did go up, the sense of disapproval, use goes down dramatically. As the sense of social disapproval goes down, what happens? Use shoots up.

It is about attitudes. It is about society sending kids the right message, that it is not OK to use drugs.

The other important factor, other than the sense of social disapproval, is the sense of risk. Not only is it wrong to use drugs, it is harmful. When kids are told that, again use is reduced dramatically.

Look at this chart. This shows the sense out there that there is a risk, a danger in using drugs. Again between 1979 and 1992, we see an increase in the sense of risk, the perception of risk. At the same time, what happens to use? It goes down dramatically. When that sense of risk or danger begins to go down after 1992, again what do we see? Use shooting up.

It is a question of attitudes.

I think we know enough about it now to know that we have got to get to kids and get this message to them clearly, again at every level, from the White House right down to our communities.

The next question I often get asked back home is, Well, why are these anti-drug attitudes weakening? What is going on out there?

The first thing I would say is that opinion leaders from the White House on down, including the U.S. Congress, have not until very recently been speaking out on this issue. There has also been declining media attention. This can be shown quantitatively.

In 1989, during the height of the so-called drug war, there were over 500 network news stories, not public service announcements—news stories—on the drug issue and the drug problem in this country. Over the last 4 years, there have been on average fewer than 100 stories. As public opinion leaders speak out, there is more media attention, and that is important to changing those attitudes we talked about earlier, baby boomer parents being conflicted. We talked about people's attitudes toward marijuana. We saw last week with the results from the CASA survey, Joe Califano's group, that in fact a lot of parents who used drugs are conflicted about whether their kids are going to use drugs or not. The expectations, in fact, are very low for their kids. As long as that is true, parents are not doing their job.

Finally, more pro-drug information out there, including reglamorization, whether it is MTV, whether it is Hollywood, whether it is our rock stars, our sports figures. We have seen a lot more reglamorization of drugs.

Finally, legalization discussion, whether it is Jocelyn Elders or whether it is Bill Buckley, that has an impact on kids.

How do we go about reversing this trend? How do we go about changing our policies and actually making a difference in the lives of our kids? Here are the four traditional approaches that we have taken: interdiction, criminal justice, treatment, and prevention.

At the Federal level, just to put this in some perspective, we spend about $1.5 billion a year on interdiction. In our criminal justice system for incarcerating and prosecuting drug offenders, we spend about $6.5 billion; treatment, about $2.6 billion; and prevention and education, about $1.4 billion.

In my view, we need to do all of these things. We need to increase interdiction, we need to lock up drug criminals, we need to increase treatment. But I think most of our effort should be devoted toward improving the education and the prevention side of this, because, again, it is a matter of attitudes. That is where I think we can get the most bang for the buck, frankly.

We need all of the other things, including a tough criminal justice system, but in my view, until we go back to the grassroots, go back to the community level and deal with this in terms of prevention and education, we will not ultimately be successful.

The idea I have is to do these community coalitions around the country. Let me give you a great story. This is about the Miami coalition. At one time Miami had the worst drug problem in America. In fact, Miami's drug rates were the highest, I think, among the top six cities in America. Once their coalition got going and they attacked it on a concerted basis, Miami's drug problem decreased significantly, so much so that by 1994, Miami not only saw its drug use going down dramatically, it was significantly less than the national average.

Community coalitions work. There are now several thousand community coalitions around the country. In our case, in greater Cincinnati, we have brought together business leaders; the media, very important; the faith community, nothing is more effective in

my view, especially in terms of prevention, than faith-based prevention programs; parents, of course, which is a critical part we talked about before; youth themselves; law enforcement.

No one is more eager to attack this problem than our law enforcement. No one is more frustrated. Our educators, teachers, coaches and so on, people who have been at this for a long time at the grassroots, and of course again national and State help which we have had.

Our mission in Cincinnati is quite simple. It is, to develop and implement a comprehensive. long-term strategy to reduce and treat substance abuse one person at a time.

I would like to focus on three points in there. One is comprehensive, another is long-term; this is not going to be solved overnight. And finally one person at a time. This is not a Washington ''one size fits all,'' top-down solution. This is trying to affect again all of those decisions that our kids make by affecting the various people that influence them.

In Cincinnati, we have divided our work into five task forces. One is the media task force. We now have one of the most aggressive antidrug media campaigns in the country. All of our major TV stations, all of our radio stations are playing public service announcements, talking about the issue.

We have done some local radio spots, as an example, with a rock and roll band, a local band that kids know, and that has the ability, I think, to get to kids a lot better than having parents or adults talking to them.

The workplace task force: Here for the first time ever, we have got health insurance companies being able and willing to offer discounts to companies that offer drug-free workplace plans.

Why is this so important? Well, most people who abuse drugs go to work every day. Second, that is where the parents are. So if we can get companies, particularly smaller companies and mid-size companies that up to now do not have a drug-free workplace plan in place, to do that, we will be able to affect this problem.

Why should insurance companies give a discount? Because it is a bottom line concern. It actually is in their interest to give a discount. Because if you have a drug-free workplace, you are going to have fewer accidents, fewer medical claims. We have convinced, again, major health care providers in our area to do that, and I think that can be done around the country.

We also have convinced our Bureau of Workers Compensation, an entity that is not looked upon with favor by a lot of our small businesses, to offer the same kinds of discounts to companies that, again, have drug-free workplace plans. We are working with these companies to develop these plans and giving them a bottom line incentive to do so.

It works. One quick story on that. One of the members of our coalition recently put a drug-free workplace program in place which included drug testing, and one day a young man came to his office, sat down and said, ''I understand there's going to be random drug testing as part of this program.'' And the manager said, ''Yes, there will.''

He said, ''Well, I would like to tell you something,'' and the man broke down. He said, ''I'm a cocaine addict, have been for over a decade. I have had six different jobs. I have been able to hide it at every one of those places where I have worked. You're now giving me the opportunity to come forward.''

That manager did not fire the guy. He got the guy in a treatment program. The guy is now more productive at work, of course, but much more importantly, his life has been changed in a fundamental way.

Mr. MILLER of Florida. Mr. Speaker, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from Florida.

Mr. MILLER of Florida. You talk about the drug-free workplace. I would like to make a couple of comments about that, if I may, because it started in my area back in the 1980's. It was very involved with Tropicana. I said, ''We have a drug problem.''

So they developed a program with the Florida Chamber of Commerce, with the Manatee Chamber of Commerce and developed a program that small businesses could do that. I am a small businessman. I put it into all my businesses, and I pretest for drugs.

It was an amazing thing. When Tropicana put a sign at their entrance to their employment office saying, Don't apply unless you are willing to be tested for drugs, they would have people walk to the door, see the sign, make a U-turn and leave.

Nowadays you have a sign that says, ''If you don't want to be tested for drugs, don't apply here, go to the White House and apply,'' something like that. It is a dramatic change, especially for small businesses. So if a big business can make it available through their local chambers, because the question is getting the money and finding the facilities to have the testing done. That is what a task force can do.

We did it successfully many years ago back in Florida. It took our biggest employer, Tropicana, to take that lead. They made a contribution, put a part-time person on our staff at our Manatee Chamber, gave the Florida Chamber a $100,000 grant to help other chambers around.

That is what a group can do to help business. Because if you stop people from getting a job because of drugs, it starts sending that message to everybody.

Mr. PORTMAN. It sends a strong signal. In our area, Procter & Gamble has taken the lead in helping our smaller and mid-size companies because they have the resources, the staff, the expertise to help these smaller businesses. But imagine what would happen if across America, health care insurers were to say to those small- and mid-size companies, we will give you a discount, say 5 percent, on your health care if you have a drug-free workplace plan in place. Of if the Bureau of Workers' Comp in Florida, I think Florida is not yet there but perhaps you are working on it, that that too will help to get these companies to do so and will help to solve this problem.

Let me just finish with the final two task forces, then I would like to open it up to some of my colleagues who have arrived. But after the workplace task force, I want to talk a little about the parent task force, what we did there, because as I said earlier, parents are key to this problem. The greatest social service agency in America is our parents. They are open at 11 on Saturday night, among other things, and if you can get our parents reengaged in this issue, we know it can make a difference.

PRIDE [Parent Resource Institute for Drug Education] has a good survey out which shows that if parents would simply talk to their kids about the issue of drug abuse, we could see drug abuse rates among our kids decrease by as much as 30 percent, just talking to their kids about it.

What have we done? Well, PRIDE has come into our district, and they have done a pilot program where they have trained parents, who then go out and train other parents. We started with 15 parents, went through an intensive couple of weeks training session; they are now out training an additional 600 parents. We are trying to do it in every school district in my area.

Again, I think it is very important that we get the parents back, engaged in this problem. The final two task forces are the community task force, and there I think some of the potential is in the religious community. Our faith-based programs work, and frankly, on a Sunday or on a Saturday in a church, in a temple, a synagogue, people I think are in a more reflective moment and willing to hear about this issue. I think it is incumbent upon our religious leaders to get the message out.

□ 1600

We have a commitment from a number of the churches, synagogues, and temples in our area to get that drug-free message out at least once a year and maybe twice a year on a concerted basis to complement all the other efforts we talked about.

The final task force we have is criminal justice. As I said earlier, no group is more desperate to find a solution to this problem than our law enforcement community. What we have done is, we have organized sort of a broad DARE Program. The DARE Program works very well in my area, as it does around the country, but there were some gaps in it. So our law enforcement, county by county, have sent out flyers to our schools, community centers, churches,

and so on to offer educated speakers who can come in and talk about this issue and relate to the kids, to supplement the DARE Program.

We also have an innovative program to enlist citizens to close down crack houses in our inner city in Cincinnati. This is being led primarily by our city councilman Charlie Winburn in Cincinnati. And that will be effective, we think, in not only closing down crack houses and patrolling street corners, but getting the community involved in this effort because it is a community outreach effort.

Again, I will just say that I think Members of Congress can play a very effective role. It is not a traditional role. It is not about passing new laws. It is not about more Federal money, frankly. It is about acting as a facilitator back home to try to solve this problem, where I think it can be most effectively solved, which is at the community level.

Speaker GINGRICH has been supportive of this; Gen. Barry McCaffrey has been in our area, he has been supportive of it; and Senator Dole has been supportive of it. Each has come and spent time with our coalition and helped us in our efforts.

The initiative recognizes that the problem is not going to be solved solely by looking to Washington. It is going to be solved one kid at a time in our families and in our communities. And for the sake of our kids and our communities, I would urge all Members of Congress to engage in this.

We have about 20 to 25 Members of Congress who have already either established a coalition or are supporting existing coalitions. The goal is nothing short of getting every single Member of Congress involved in this effort. There is no reason we should not all be involved. We can blanket the country, all 435 districts.

The facts are in. Drug use is skyrocketing. Community coalitions work to address this problem. I think it is time we roll up our sleeves and get to work.

I would be happy to yield to the gentleman from Florida.

Mr. MILLER of Florida. Mr. Speaker, I want to commend the gentleman for taking the lead in this role. It takes leadership. And as leaders of our country, as elected members of the government, we have to take on a responsibility here. This is not just passing legislation, as the gentleman said.

I really commend the gentleman for taking the lead within this Congress, because it is a problem and it is a glaring problem. It does not take a lot of chart experts, Ross Perot people, to see that drug use had gone down for 11 years and then, when Bill Clinton gets elected, it goes up.

Now, there has to be some correlation to that. It is a complex issue and it is not one person's fault, there are a lot of reasons, but it has to start at the top. It is the moral leadership of our country.

When we have the President of the United States asked on MTV, and the question is, ''If you had to do it all over again, would you inhale?'' And the President laughs and says, ''Sure, if I could, I tried it before,'' well, that is not the type of leadership we should have on this very serious issue dealing with crimes and such.

So we need to start at the top, using that bully pulpit. And Nancy Reagan used it so effectively by using the ''just say no.'' And so I think all of us, whether it be as Members of Congress, State legislators, Senators, mayors, we should work together and do exactly as the gentleman is doing and learning from his experience in putting this together.

I remember back in the 1980's, when I was very involved in our Chamber of Commerce, I worked putting a task force together. I had two teenagers back home, and, fortunately, they were good kids, but we were concerned about the problem. So we got together with a group organizing things and through the Chamber trying to get businesses aware of it.

Because when we talk about businesses, businesses save money by having a drug treatment program, by keeping people off drugs. Workmen's comp rates will go down. It saves money. The turnover of employees, turnover costs money to a business. They do not want people to change jobs. Hiring a bad employee is bad business.

So I think whether it is business taking the leadership or Members of Congress or politicians, we all need to jump in and get involved in this. And Bob Dole, I know, has that commitment, and that is what makes me feel good, that he will continue the tradition that Ronald Reagan started and George Bush started.

So I commend the gentleman for taking that leadership and we need more people doing that. And I will be getting back active in that issue in my hometown of Bradenton.

Mr. PORTMAN. Mr. Speaker, I would now yield to the other gentleman from Florida who has arrived.

Mr. MICA. Mr. Speaker, I wanted to take just a minute to also express my deep appreciation to the gentleman from Ohio [Mr. PORTMAN] for his leadership on this issue. He has brought the issue to the Republican Conference, he has brought it to the Congress and to the attention of the American people and to his community, and he has tried to take steps in a positive way to bring people together to solve this problem.

It is a problem that we have to address from the White House to the courthouse, and it is a problem that is destroying our young people. Unless we act we will not have a future generation that is drug free. And until we act, we will continue to see juvenile crime and problems across this great land.

Seventy percent of the crimes in America, ask our police chiefs, ask our sheriffs, ask our State law enforcement and Federal officials, 70 percent of all the crimes in this Nation are, in fact, drug related. And people serving behind bars, there are 1.6 million Americans incarcerated, and about 70 percent of them are there because of drug use or abuse or some criminal activity that has led from crime.

Mr. PORTMAN. If the gentleman will yield back for a moment on that briefly.

Mr. MICA. Certainly.

Mr. PORTMAN. We talked about the impact of illegal drug use on violent crime, and the gentleman is right. When we ask police chiefs around the country what the best way would be to reduce violent crime, guess what they say?

Mr. MICA. What is that?

Mr. PORTMAN. Reducing drug abuse. They do not talk, frankly, about gun control, they do not talk about the death penalty, they do not talk about a lot of other issues that are ones we might naturally think would be the best way to reduce violent crimes. The No. 1 issue by far, for them, is illegal drug use. By far the No. 1 way to reduce violent crime in this country. These are the police chiefs, who are on the line.

Mr. MICA. Absolutely. If the gentleman will yield again.

Mr. PORTMAN. Certainly.

Mr. MICA. I come from central Florida. I have a wonderful area in east central Florida, from Orlando to Daytona Beach. Our blaring headlines are that teenage heroin use is at record epidemic levels.

In the last few weeks, just in the last weekend, we had one of these home invasions where a gentleman tried to defend someone. These people were out trying to get drug money and they shot in cold-blooded murder a young person in our peaceful community.

Another incident in my community just the week before. I admire hard work. I was raised to work from the time I was just a young person. And here in my community was a gentleman at 5 o'clock in the morning who was out filling newspaper racks in Orlando and trying to make a living and taking the change from his newspaper rack. He was a little vendor, again working in the early dawn, and these drug crazed individuals came up and blew him away. Just destroyed his life. Here is a man working, dogging, trying to make it.

I have thousands of senior citizens, but I met a young lady in K–Mart in my community, and I asked her how things were going and was she working and making it, and she is trying to go to school. But she says, Mr. MICA, I have to take the bus to get to work, and I can only work during the day, and it is difficult for me to get to class because I am afraid to be at a bus stop. I am afraid to go out at night. Here is a young lady trying to make it into community college.

So these are the problems. When we have 70 percent of the criminals behind

bars and involved in this, and then we have a President that says just say maybe.

I have had two teenagers, just like the other gentleman from Florida [Mr. MILLER], in the last 4 years in my house, and I say just say no as a dad, just say no as a caring parent, just say no as a citizen of the community, and my wife joins me in that. And then we have the highest elected officer in the Nation, everyone we have always looked up to, just say, ''Ha-ha-ha, I'd try it if I had the opportunity again.'' Now, what message does that send?

The other things that disturbs me, and one reason I came out tonight, is again I see the President on television saying that Republicans have cut drug programs. And nothing can be further from the truth. Nothing can be further from the facts. Let me, in fact, give my colleagues the facts.

I serve on the committee that oversees our drug war and have been working on this with the gentleman from Ohio [Mr. PORTMAN] since we both got elected some 3 years ago, when we called for hearings and they ignored us. When we said this is not going to work, putting all the money into treatment and ignoring the other parts, interdiction, enforcement, and education.

They gutted these programs. Now they have the nerve to say that we cut these. Let me talk about the safe and drug-free school program. Republicans never cut the safe and drug-free schools.

First, I want everyone to understand that the Republicans did not take control of the Congress until just the last 18 or 20 months. The first 24 months, from 1992, with the election in the fall and taking office in January, the President in fact controlled the executive branch. As I recall, there were over 250 Democrats in the House of Representatives, a great majority, greater than we ever had, and they controlled the other body by a majority. They had control of all three bodies.

They never held the hearings. In fact, in fiscal years 1994 and 1995 the Democrats controlled the Congress and cut the programs, safe and drug-free schools. President Clinton, in 1994, requested $598.2 million for the program; the Democrats in Congress cut this to $187 million. $187.2 million, to be exact. His own party cut $174 million from his request in 1995. Again, when we did not control this. They did that. They should be held responsible for it.

Now, what are we trying to do to restore it? Let me tell my colleagues. First of all, the drug czar's office. The President says he has downsized Government. Well, he started in the drug czar's office and he cut the staff of 150 positions down to about 25 positions. This Congress, through the leadership of the gentleman from Ohio, Mr. PORTMAN, the gentleman from Pennsylvania, Mr. CLINGER, the gentleman from Illinois, Mr. HASTERT, DENNY HASTERT, the gentleman from New Hampshire, Mr. ZELIFF, and others who worked so hard on trying to put this back together, we have put in the Treasury, Postal Service, and general government appropriations bill an increase in the budget of $7.9 million over last year, and we have restored from 25 to 154 positions in the drug czar's office.

So they dismantled it. It did not work. And we restored it and we took action when we controlled the House of Representatives and the other body.

In the Departments of Commerce, Justice, and State, the Judiciary, and related agencies appropriations, in the drug enforcement budget, we have increased the budget. We have added 75 new agents for source country programs.

They killed the interdiction program. They gutted the interdiction program. They put all the money in treatments; sort of treating the wounded in the battle and forgetting the rest of the battle.

We have been there, our subcommittee, and not one Member of the minority went to South America, to Columbia, to Bolivia, to Peru. They boycotted the visit. They did not go with us to any of those countries and meet with the leaders, meet with out DEA agents.

In fact, they tried to sabotage the trip and told the press we were taking too many staff when we included DEA agents and Customs officials and others to go down with us and see what we could do at first look at the situation: Was it as bad as the reports were; that this interdiction program, the cuts in it were a disaster by this administration? They did not want us to go and see firsthand.

We went and they tried to sabotage the trip and did not participate in the trip. An offense to the Congress and to our subcommittee.

So, then, they cut the military participation in the drug war and we have restored them. In military and drug interdiction and counter drug activities we are $132 million higher than the President's request.

In fact, when I was in the jungles of Bolivia, I was told by one of our agents that they took $40 million out of their program and sent it up to Haiti for their nation building program.

□ 1615

Our agents, which were left in the jungle with a shoestring budget, actually some of them were even taking money out of their own pockets to make sure that some of these programs went forward, and what were the results? We had a hearing in our Subcommittee on National Security, International Affairs, and Criminal Justice. The result was that there are 10,000 hectares, expansive areas of heroin growing in Colombia. We even found in Peru heroin growing. When you cut the interdiction, when you cut these programs to stop drugs at their source, these cost-effective programs, you see the results. Heroin, the hearing that we held this morning, is flooding this country, in fact.

So we have restored money for all of these programs. We did not cut these. I take great offense at the President's comments that we cut them. We did not have control of the Congress at that time.

Mr. Speaker, then again you get back to the point of the leadership. When you appoint the chief health officer of our great Nation, a high office of respect, a chief health officer, and that health officer, Joycelyn Elders, says just say maybe, what message did that send? How did that echo across our land to our children, to our schools, and then have the President make a joke of inhaling on MTV as my colleague from Florida had just commented.

So, Republicans have again restored these programs. We have held hearings on the problem. We are not trying to politicize it. Some people say, oh, we are just making political commentary. This is not political commentary. This is the future of our next generation. This is the root of the problem of crime in this country. This is the root of many of the social ills that we see.

This is why we have the wrong people behind bars. In my State and here in Washington, DC, you have to live behind bars because you fear for your own life. You fear for going out at night if you are trying to make a living or go to school or be a productive citizen or student in this society.

So, again, I believe that you cannot cut interdiction, you cannot cut enforcement. You cannot cut the education programs, and we cannot cut the treatment programs.

Mr. Speaker, let me say one thing about the treatment programs that concerns me. We have put a great deal of money into the treatment programs. I am really concerned that the information we have gotten back, it is repeated information, studies. I know General McCaffrey got a report from the Department of Defense and has squashed that report. But those treatment programs have not been effective, 90 percent of those programs are a failure.

We find, in fact, that sometimes even some of the private sector programs, the church-related programs, the community programs that have been established are much more effective and should have our support. So yes, we have to attack drugs on four prongs: on education, interdiction, and we have got to look at treatment and enforcement. We cannot let any of those four legs of that stool be broken or damaged.

So we have done our part. When I was a Member in the minority and the gentleman from Ohio [Mr. PORTMAN] signed with me and the gentleman from Florida [Mr. MILLER] signed with me, we called for hearings. Over 119 of us, I believe, signed petitions calling for hearings, and our pleas were ignored.

The last day of the session, a hearing was held for a very brief period of time. The meeting was adjourned when I tried to ask questions. It was a farcical charade, and now we see the result of it. The results are very clear, and someone has to take the responsibility.

Mr. Speaker, the leadership is not just Mr. PORTMAN from Ohio, Mr. MILLER from Florida, Mr. ZELIFF from New Hampshire, Mr. CLINGER from Pennsylvania, Mr. MICA from Florida. The leadership starts at the White House, the highest level.

Tomorrow I have to do something that I wish I did not have to do, but as chairman of the House Civil Service Subcommittee that overseas our Federal employees and our Federal work force, I have to hold hearings tomorrow on the question of the employment of individuals to the highest office of the land, the White House.

We are not talking about some little remote Arkansas community or some Third World country. We are talking about the White House, the highest office in this land. I am holding hearings tomorrow to find out why our chief law enforcement agencies, the FBI and the Secret Service, became so concerned about people who were coming into this administration, who were not taking background checks, who could have access to national security, who could be advising the Chief Executive of the land who makes the decisions about what we do on an instantaneous basis, what prompted them when they testified before us that these folks that were coming in had recent histories of not just—we are not talking about marijuana 20 years ago. We are talking about hallucinogenic drugs. We are talking about cocaine. We are talking about hard narcotics and subverting the process. Do we need a law to protect us from this type of situation?

So I will chair that hearing, but it is with great dismay that I have to examine the highest office of our land in this fashion and bring this into question but provide in fact, as my responsibility as chair of this committee, as part of the oversight responsibility of this Congress, to see what is going on in the highest office of our land, and to see that our national security is protected and to see that future White Houses have the respect of this Congress and of every citizen. If our highest office sets our lowest standards, what have we come to in this Nation?

So, again, I commend the gentleman. He has been outspoken. He has been persistent. He has been productive because he has helped get the attention of the Congress, of the leadership. He has helped us put Humpty Dumpty back on the wall and back together again; and, hopefully, hopefully, my children and children of people around this country will have a safe street; will have safe schools, where we are not employing another law enforcement officer at the school and following the arts teacher and the music teacher and the teachers that we need; where we can walk our streets as free Americans; where seniors do not have to fear walking outside in their own streets and neighborhoods and only go out in daylight.

So I thank you for shedding light and for the leadership of the gentleman from Ohio [Mr. PORTMAN]. I thank my colleague, my dear friend from Florida [Mr. MILLER], for his leadership and I yield back.

Mr. PORTMAN. Mr. Speaker, I commend the gentleman from Florida [Mr. MICA] for putting this in perspective for us and also for all the time and effort that he has put into this issue. He has become a true expert on it. He is one of our leading policy makers on this issue now, and I wish him luck in his hearing tomorrow in getting some answers.

We have a little time left, and I would like to yield to the other gentleman from Florida who has joined us.

Mr. MILLER of Florida. Mr. Speaker, my friend from Florida was talking about the tie-in between crime and drugs and the need for the leadership at the top. When the President of the United States, as we have said, laughs about whether he would do it again, he says, sure if I could, I tried it before. When the spokesman for the White House says, when asked about marijuana, quote: I was a kid in the 1970's, did I spoke a joint from time to time? Of course, I did.

They do not say it is wrong. They do not say it was a mistake. They do not apologize for it. They just kind of laugh it off.

Starting with marijuana is where we have to attack the problem, and that is where moral leadership is so important. There was a study out by Joseph Califano, the head of the center on addiction and substance abuse. He was Secretary of HHS under Jimmy Carter, a Democrat. A teenager who uses marijuana is 85 times more likely to graduate to cocaine than those who abstain. The percentage of children who are using marijuana that graduated from high school in 1992, 22 percent of graduating seniors had used marijuana during the past year. Last year, in 1995, that increased to 35 percent, going from 22 to 35 percent in 4 short years.

Mr. Speaker, let me read what Joseph Califano said, quote: The jump in marijuana use among America's children from 1992 to 1994 signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 will become regular users and cocaine addicts.

It is terrible what is happening. I wish the President would put as much focus on drugs as he does on tobacco. Tobacco is wrong. I oppose some of the programs in tobacco, too, but focus on drugs that are killing people at the youngest age and that is cruel to the kids and the families and the communities today.

I thank my colleague for having this special order. I appreciate the possibility to have been able to join with you.

Mr. PORTMAN. Let me add, Mr. MILLER, what I view as a hopeful statistic to those that you have mentioned. That is, if you can keep a kid drug-free until that kid is 19 years old, then he or she has a 90-percent chance of being drug-free for the rest of his or her life.

Those are those critical years, those teenage years. This is why, as I said earlier, it is tragic that this drug use is occurring at an earlier and earlier age. We talked about the eighth graders. In a typical class of eighth graders, five kids have now tried marijuana. What we have got to do is address this problem at every level. Mr. MICA talked about it in terms of interdiction, source country, treatment, our criminal justice system, and finally prevention and education.

Mr. Speaker, I would again like to close by saying that it is my view that part of what we need to do is to increase our efforts at the community level, the grassroots level. It is a philosophy that I think is very consistent with where this Congress is headed in terms of giving people more a sense of personal responsibility, the sense that our communities are where we are going to solve a lot of our problems.

Certainly, the drug problem is one of those. I urge all of my colleagues to do whatever they can, not only at the national level where it is very important but also in their communities, in their homes, in their neighborhoods, in the school districts they represent, to attack this problem. We know it can help. We know it can begin to reduce the dramatic increase in drug use that we have seen since 1992. And with that, Mr. Speaker, I yield back the remainder of my time.

IMPACT OF CHERNOBYL DISASTER ON NATION OF BELARUS

The SPEAKER pro tempore (Mr. COBLE). Under the Speaker's announced policy of May 12, 1995, the gentleman from New Jersey [Mr. PALLONE] is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, I know that I will be joined by some other colleagues to talk about education cuts and the effect of Mr. Dole's economic plan on education programs in the Nation.

Before my colleagues join me, I would just like to take some of the time here during this 60 minutes to talk about another issue unrelated to the issue of education but an important issue to many constituents in my district.

This Saturday I will be appearing at a dinner sponsored by members of the Belorussian community in my district in New Jersey. They will be raising money for the victims of Chernobyl, of the Chernobyl nuclear accident which took place about 10 years ago now.

Mr. Speaker, I just wanted to detail, if I could, for about 5 minutes some of the problems that resulted from the Chernobyl disaster in the country of

Belarus and also talk about some of the problems that that nation now faces to its very independence.

On April 26, 1986, reactor No. 4 of the Chernobyl nuclear power plant caught fire and caused an explosion of epic proportions. This explosion measured 7 on the 7-level scale of nuclear accidents in comparison to the Three Mile Island accident, which measured 5.

Although one decade has passed since this explosion, the aftermath and truth remain very clouded about what happened. Even though this explosion spewed highly radioactive elements into the atmosphere, the Soviet Union, or the government of the then-Soviet Union, remained largely silent. Twelve hours passed before the Kremlin leadership created a government commission to respond to the blast. It took an additional 24 hours before they began to evacuate the nuclear plant's company town.

□ 1630

And 48 hours after the meltdown, the government publicly announced the Chernobyl explosion. This announcement told the victims very little. It was not until August of that same year that the Soviets announced that 50 million curies of radiation had been released by the Chernobyl nuclear reactor. Current research states that the actual amount of radiation spewed by the power plant ranged from 150 million to 200 million curies. In comparison the Three Mile Island accident released a mere 15 curies.

Years have passed and the Soviet Union is no more, and Belarus and neighboring nations such as the Ukraine are still suffering from the sickness and misery from that accident. I am particularly concerned about the state of the millions of children who suffered and continue to suffer from the effects of radiation and who will probably suffer most of their lives from the long-term effects of radiation. The medical, environmental, and psychological effects still plague the affected regions which, as I said, include parts of Belarus, Ukraine, and Russia. A study in the Nature Journal states that children born in Belarus in 1994 to parents who lived in the area during the meltdown suffered from twice the normal rate of a specific type of mutation. Germline mutations, found in sperm and egg DNA, are being passed on from generation to generation. The World Health Organization speculates that one in every 10 children living in the irradiated zones during the summer of 1986 have contracted thyroid cancer.

In addition to the medical effects, the impact of the environmental damage is still felt today. The 1986 meltdown contaminated 100,000 square miles of once arable farmland. This encompasses approximately 20 percent of all of Belarus, 8 percent of Ukraine, and 1 percent of the Russian Federation. The irradiated soil poses seemingly endless problems for these countries' agrarian communities.

I do not want to keep talking about this terrible disaster and its effects all day. I think that it is, it is really important and it is certainly commendable that my own constituents who are Belarusan Americans continue to make the point that we must address the problem of radiation in the aftermath of the Chernobyl explosion. They continue to raise money for the victims. They continue to be concerned about the victims and help them with medical supplies and other needs. That effort needs to continue. This country certainly, both on a government and on a nonprofit private basis, needs to continue to help the victims and their children.

I also wanted to point out today, though, just as we must continue our international efforts to assist Belarus in the aftermath of Chernobyl, we must show our staunch support for that nation's independence. Belarus does not receive much attention in the media. Many of, most Americans probably, maybe not, maybe they do not even know where it is. But a recent New York Times editorial underscores the imminent dangers posed by the President of Belarus, Mr. Aleksandr Lukashenka.

Shortly after Belarus freed itself from the oppressive clutches of the Soviet Union, this newly independent nation began its transition to a stable democracy. This 5-year political and economic progress may come to an abrupt halt if we do not press the current President to change his ways. President Lukashenka has actually proposed the reintegration of Belarus with Russia.

In response to this new reintegration plan, 15,000 members of the Belarusan Popular Front marched in opposition to the threat of reintegration. These marchers fear that President Lukashenka will in fact relinquish Belarus' current democratic sovereignty.

I just wanted to read, if I could, some sections of the New York Times editorial that was dated August 31 of this year that is entitled ''The Tyrant of Belarus.'' It talks about the undemocratic manner in which President Lukashenka is conducting his leadership in the country.

Last year Interior Ministry troops broke up a parliamentary protest against the President's leadership and bludgeoned 18 lawmakers. Imagine for those of us who are Members of the House of Representatives and who really do not have to even fear, I do not think in most cases, the possibility of being attacked, in this case the executive of the country actually came into the parliament building and was attacking lawmakers.

This President has thrown political opponents in jail, closed independent newspapers and reimposed Soviet era restrictions on travel abroad. Fearing imprisonment or worse in this new police state, two opposition political leaders recently asked for political asylum in the United States and Washington promptly granted the request to ensure the safety of the two men.

I am not sure I am pronouncing it properly, but they are Zenon Paznyak and Sergei Nayumchik. Essentially, I am proud of the fact that the United States did grant them asylum. Mr. Lukashenka is also rolling back many of the economic reforms initiated in the first months of Belarusan independence. He has frozen the Government's privatization program and slapped banks with strict state controls threatening to nationalize many of them. These measures can only further destabilize an economy that shrank 10 percent last year and has left many Belarusans impoverished. The debt relief and economic bailout Mr. Lukashenko hopes to get from Russia are not likely to materialize, and alarmed by developments, the International Monetary Fund has sensibly delayed a $300 million loan.

Just one more section from the New York Times article editorial. They say:

> It may be too much to expect Boris Yeltsin and his colleagues in the Kremlin to press Mr. Lukashenka to change his ways, but the United States and democratic nations of Europe should make their concern plain to him. The rising of a new dictatorship in the heart of eastern Europe must not be ignored.

We certainly do not intend to ignore it, and it is one of the reasons that I am here today pointing it out. As a Congressman representing a large Belarusan-American community and a supporter of those members of the Popular Front, I strongly believe that we must act to prevent this new union of Russia and Belarus. We cannot allow a new autocratic regime to rise up in the midst of Eastern Europe's struggle toward democracy.

I recently introduced House Concurrent Resolution 163, which supports the newly independent and democratic Belarus for which generations of Belarusan patriots fought and died. This resolution urges Members of Congress to unanimously call upon the entire population of Belarus and all Belarusans throughout the world to defend statehood and democracy of Belarus, help sustain the country's Constitution, prevent the loss of its hard won nationhood and encourage its chance to survive as an equal and full-fledged member State among the sovereign nations of the world.

I promise to continue to support Belarus in its advancement toward stability and democracy, not the turn that its current president has taken us.

EDUCATION CUTS

Mr. Speaker, with that, I will end my discussion of Belarus and the concerns that I have expressed and turn to the other issue that I would like to discuss and I believe we have some of my colleagues that will be joining us later. That is the issue of education cuts and the impact of the Dole economic plan on education, on Federal education policy.

If I could just take a minute, Mr. Speaker, and point out that earlier this

week, we received another indication of not only Mr. Dole but also the Republican leadership's view of Federal education programs.

On Tuesday the Senate majority leader, TRENT LOTT, denounced congressional Democrats for their push to restore $3.1 billion in education and job training funding, saying ''I cannot, as leader of the majority, allow the minority to throw out their political garbage one after the other and expect our people to just bat it down repeatedly with votes.''

Mimicking the process which characterized last year's budget debate when extremists shut down the Federal Government two times, Republican leaders are now backtracking from Senator LOTT's statements and reportedly are considering a watered down version of the Democrats education agenda.

My point, Mr. Speaker, is that education should be a priority for this Congress and for the Federal Government, if we are going to talk about our future as a country and the future of our citizens, education and the role of Federal education is very important, the role of the Federal Government and our ability to influence and help States and local governments at the secondary school level and also our ability to help those who would like to go on to college or to university for either undergraduate or graduate degrees. Senator LOTT'S statement indicates that when it comes to the Republican leadership on education, the old adage about teaching old dogs new tricks is true. It simply cannot be done.

They essentially tell the American people that they understand how important education is and they rail against the Democrats for accusing them of not wanting all Americans to be educated, but then they push plans to gut education programs.

I only have to reflect back on what has happened over the last 2 years to give an indication of how the Republican leadership has deprioritized education in this Congress. We can even really skip over the cuts of 1995 and just talk about the current year 1996.

In the fiscal year 1997 budget resolution that would essentially take effect October of this year, 1996, funding for education and training programs is essentially frozen below the previous year's fiscal year levels for 6 years. So what we have is essentially that when adjusted for inflation, we have a 21-percent reduction in Federal funding for education over the next 6 years, by the year 2002, providing no assistance for helping schools meet projected enrollment increases of 12 percent over the next decade. So what the Republican leadership is saying to us is, even though they understand that there are going to be more students, there is going to be a larger enrollment, that they are going to freeze funding for education programs.

In other words, the Republican plan is basically to provide less as the demand for education assistance increases around the country. In many school districts, such as New York City, where the school year opened with closets doubling as classrooms due to a lack of space, there is already immense suffering from skyrocketing enrollments.

It is not the time to cut back on education funding or even freeze funding at previous fiscal year levels. The House-passed fiscal year 1997 education appropriations bill includes cuts spanning the entire spectrum of Federal education programs from preschool students trying to get a jump on life through Head Start to the high school student looking for some assistance to get to college.

Under the bill, funding for title I supplemental education services would be frozen, denying assistance to 150,000 fewer children than in fiscal year 1996, simply because the same services will cost more in 1997. The Goals 2000 education reform program, which President Clinton has talked about and basically introduced, would be eliminated, denying reform grants to 8,500 schools serving 4.5 million children across the country.

At the same time the Republicans attacked the President on the issue of drug abuse, and we have heard that repeatedly today, they continue to push an education bill that cuts the safe and drug free schools program by $25 million, weakening our ability to educate our children in safer, drug free environments.

I am sick and tired of hearing my colleagues on the other side of the aisle talk about funding for drug abuse and then come in here and cut the very programs that would prevent drug abuse, particularly on behalf of the young people.

With respect to higher education, the Republican bill allows for a mere 1.2-percent increase in the maximum Pell grants award compared to the administration's proposed 9.3-percent increase. Federal contributions for Perkins loans would be eliminated, thereby denying low-interest loans to 96,000 students in the coming year.

These are the very programs that allow students who cannot afford to go on to higher education, Pell grants, Perkins loans, and also the AmeriCorps Program. The AmeriCorps Program was a program that was proposed and enacted into law under President Clinton that basically allows students to do volunteer service in the community, and that service is used to pay back their loans. It is a new source of funding to pay for higher education. But the AmeriCorps Program would be terminated under the Republican appropriations bill. Through the back door the GOP would realize its long desired dream of effectively ending the Direct Loan Program by reducing the funds to administer it. The Direct Loan Program is another innovative program that instead of going through lenders, banks, to get a student loan, the university administers the loan program directly. It allows for more students at various colleges and universities to get loans, basically expanding the amount of loans that are available because you do not have to use the middle person. Again, they are trying to reduce that, reducing the funds to administer. That would mean that a lot of colleges and universities simply would not be able to have the direct loan programs.

These programs that I mentioned, the ones that give our youngest children an early start on life, that teach our disadvantaged students how to read and write and solve mathematical problems, that keep drugs out of our schools, that expand access to higher education and that send our children to college, are the ones that Republicans would have you believe are, to use the words of the Senate majority leader, ''political garbage.''

I obviously could not disagree more with that statement. They are not political garbage. It is important that the funding be increased for those programs in this year's appropriations bill, and it is important that over the long term, that we expand educational opportunity through student loans and the rest of these devices.

I just wanted to say a little bit about what the Republicans have been trying to do since they controlled Congress. On the other hand, we see the President and congressional Democrats coming up with new ideas to try to expand educational opportunity and provide good funding and new innovative programs to expand educational opportunities.

☐ 1645

Just to give you an example of that, and I have talked about it before on the floor, in July the administration announced a school construction initiative to improve the physical infrastructure, the actual buildings in which our children are taught over the next 5 years. Last month the President announced the America Reads challenge, which proposes to make every child in the country literate by the third grade. And then the congressional Democrats have the Families First agenda that basically provides American families a $10,000 tax deduction for college and job training, and we have also proposed to provide a $1,500 tax credit for the first 2 years of college for students who work hard, keep a B average and basically stay off drugs.

What we are doing as Democrats essentially is trying to see how we can come up with innovative ways, whether it is through the Tax Code, whether it is through loan programs, whether it is through grant programs, to try to expand educational opportunity, and I think it is quite clear that there is a major contrast between the President and Mr. Dole on this issue.

I see that one of my colleagues has joined us, Mr. HINCHEY from New York, and I would be glad to yield to him at this time.

Mr. HINCHEY. Mr. Speaker, I was listening to the remarks that the gentleman was making about education and the need for improving the quality of our education here in United States, and actually that is an ongoing process. Improving the quality of education is something that has been happening here since the very beginning, and it is an evolutionary process and will continue to be so. We will never be at a condition when we have done everything perfectly with regard to education, but the fact of the matter is that in this particular Congress, over the course of most of the last 2 years we have seen a compilation, frankly, of what can only be called a shameful record on the issue of education.

Just for example, last year the congressional leadership here in this House produced a budget resolution that called for the largest cuts in Federal funding for education and job training that we have ever seen in the Nation's history. Also, that same budget resolution attempted to sharply limit access to student loans, making it much more difficult and in some cases, many cases, frankly would have made it impossible for young people to get a college education.

The Federal Government shut down in part last winter because the majority party here insisted on cutting elementary and secondary education programs by $3.3 billion, and they did that in order to finance a tax cut for the wealthy. The Government shut down because the President said no to that. The President said that it would be a shocking retreat from our education responsibilities to cut back on the Federal funding of education by $3.3 billion. Not only would that make education more difficult and less meaningful and less accessible to millions of American children, but it would also force up local real property taxes around the country.

In New York and in New Jersey education is financed in large part, frankly too much, by the real property tax, and whenever the Federal Government cuts back on its funding, its contributions to elementary and secondary education, the result is that education suffers but also real property taxpayers, senior citizens on fixed incomes, end up paying more that they cannot afford. So it is really a transfer of taxing obligation from the Federal Government to the local government, from the broad-based Federal taxes which are much fairer.

I mean, no one likes taxes. Taxes are never popular. But at least the taxes levied by the Federal Government are in almost every instance broad-based, progressive and much fairer than local real property taxes. And so when you have this transfer of obligation for funding from the Federal Government to the local government, you also have a shift in taxing obligation, and you shift the cost of education from the broad-based, more progressive Federal taxes to the more narrowly based, more regressive local real property taxes.

That is another aspect of this budget resolution that the President vetoed and the majority here insisted upon for week after week. Ultimately they lost because the President would not give in to them, but they attempted to blackmail the minority here in this House, they attempted to blackmail the President into signing those terrible budget bills which would have done the things that we are talking about here.

So that is part of the record here. And then, furthermore, still ignoring that quality education is a top priority for America's parents, Congress passed a budget resolution in 1996 that will result in a real cut in educational services all across the country by 20 percent over the next 6 years.

Now that is the attitude that this majority has in this House on education. That is the record, and I think it is a shameful one. The House leadership has turned the 3 R's of education, which are reading, writing, and arithmetic, into retraction, reduction, and retreat. That is what they would do with the educational system here in our country. Fortunately, we were able to prevent them from doing it by the President's veto and our ability to sustain that veto. So by putting a freeze on Federal education spending, we would be denying our children opportunities to succeed in the workplace.

Now supporters of the fiscal 1997 budget resolution and the House-passed appropriations bill are ignoring the realities of education today, and what are those realities? First of all, enrollment in elementary and secondary schools will grow by 7 million students between 1993 and the year 2005. So the burden on elementary and secondary schools is not going to decline, it is going to increase. We are going to have more students in school, and we need to educate them. That is a basic responsibility of any society, to educate the next generation. This government, this majority in this House, wants to wash its hands of that responsibility completely and pass it on to somebody else.

What else? United States schools need right now $112 billion to repair or upgrade dangerous facilities. That is not to make the schools shining and perfect and lovely, as we all might want them to be. That $112 billion is the cost of repairing facilities so that they would no longer be dangerous.

Our young people face a job market that is more competitive, more technologically advanced than ever before. We should be preparing our children to meet these challenges, instead of removing critical funding from our school system and slashing student loans.

The Senate has one last chance to keep the doors of educational opportunity open for our children and maintain our investment in the future. Follow the lead of Senate Democrats and restore $3.1 billion in education and job training funding to the Labor-HHS-Education appropriations bill. That is what you support, that is what I support, that is what most of us in our party in this House support, and that is what I think we need to do.

I call on all of the people in this House to break with the extreme agenda of the leadership here and listen to what American families are saying. Education is a top priority in households across the country, and it should be a top priority here in Washington. We are doing precisely the wrong thing by reducing funding for education, if that is what they succeed in doing. They would be doing exactly the opposite of what we ought to be doing. We ought to be promoting the best quality educational system that we can afford. We should be ensuring that every child has access to good quality education from Head Start through college and on to graduate education, if they have the ability and the interest to do so. Advanced degrees are going to be critically more important in the future.

My 9-year-old daughter will be engaging in various kinds of activities in whatever professional pursuit she follows, things that we can hardly imagine today, because of the technological advancements that we are experiencing. We are moving into an era that is less and less dependent on natural resource industries and more and more dependent upon intellectual resource industries. We need the next generation to be highly educated and well trained and sophisticated in their approach to the job market and the marketplace, and we have a responsibility now, those of us who are serving in these positions now have a responsibility, to ensure that they have those opportunities, and if we fail to meet that responsibility, then our country will be a much different place as we enter the 21st century.

Mr. PALLONE. I thank the gentleman for joining me and pointing out not only what we have seen in the last 2 years under this Republican leadership in Congress and the negative impact on education programs, but also how important it is for the future to make sure that education remains a priority for the Federal Government in Federal funding.

And one of the reasons that I took to the floor this evening, and I know you did too, is because of our concern that if you look at Mr. Dole's economic plan, that it would force even further reductions in education spending and again deprioritize, if you will, education in terms of the Federal role.

Just to give an indication of that, there was an independent analysis of Mr. Dole's economic plan by Business Week, the Concord Coalition and others, that showed that his risky plan would require 40-percent cuts in a broad range of domestic programs, including education, and what they are saying is that a 40-percent cut in education and training would mean 300,000

children could be denied Head Start preschool opportunities, 5,800 local school districts could be denied safe and drug-free school services, 9.700 young people could be denied AmeriCorps national service opportunities and 1.5 million students could be denied Pell Grant scholarships.

So what we would see, the very concerns that we have over what is happened the last 2 years with some of these important education programs, would only be magnified much more if Mr. Dole's economic plan was put into place, and I do not see how the Federal Government can essentially get out of the role of helping with education programs and leave that responsibility in terms of the funding to the States and the local governments, because, as you say, the end result would be that State and local taxes could simply increase, particularly local property taxes, because so many States, including my own State of New Jersey, rely primarily on local property taxes to pay for education programs, and if they do not get Federal help to supplement State help, they would just either have to cut back significantly or raise their local property taxes in order to pay for those same programs just to keep going, just to keep the existing programs going.

Mr. HINCHEY. No question about it. I mean the interesting thing about—actually there are many interesting things about Mr. Dole's proposals—one of the interesting things about his proposal for an almost $550 billion tax cut comes about when people ask him how is he going to do that: How will you cut taxes by $550 billion? What are the programs specifically that you will cut?

Well, he does not come up with specifics. He does not tell us what he is going to do. What he says is: ''Trust me, where there is a will, there is a way.''

And I have heard Jack Kemp say that exactly that way: Where there is a will, there is a way. And Bob Dole has the will; I do not doubt that. I do not doubt that for one moment. I am convinced that Bob Dole has the will to cut Medicare so that it no longer is able to serve our elderly citizens' health care needs, to gut Medicaid so that people who need health care, around-the-clock supervision in nursing homes, people who are elderly, frail elderly, people with total disabilities will be thrown out on the street. I do not doubt that he has the will to do that.

I do not doubt, either, that he has the will to cut education, because they have tried to do it. They have tried to cut education. We have seen them do it in this Congress here this year and last year. We have seen them try in every way they could. We stood in their way and prevented them from doing it, but they tried everything they could to cut education.

One of the things about that that astounded me the most was when they tried to cut the Eisenhower Teacher Training Program. That has been around for a long time. I was a sailor, a white hat sailor on a tin can destroyer in the western Pacific sailing in the Straits of Taiwan when the Soviet Union launched something called sputnik. It was the first satellite ever launched. Dwight Eisenhower was President of the United States, and it was a wake-up call to the President and to this Congress back then in the late 1950's.

□ 1700

What they did was they decided that they needed to concentrate more on education, and particularly on education in mathematics and science, in physics. So the Eisenhower education program was started to do a very good and very important thing. That was to ensure the best quality teachers in our high schools to teach young people in mathematics and algebra, in calculus, in trigonometry, in physics and basic physics and applied physics. and in other scientific pursuits, so that we could not only compete with the Soviet Union, the then Soviet Union, but surpass them.

As a matter of fact, that program was successful, because we did precisely that. We went on not only to catch up to the Soviets in the space program, but to go far beyond them, surpass them by leaps and bounds. Now the situation is that we are cooperating with them in space today.

But that cooperation would never have come about if the initiative had been left to them. That cooperation has come about only because we surpassed them, because we were better than they were. We then invited them to participate with us, as this very generous Nation had done many times in the past with other people.

But now this Congress wants to eliminate even the Eisenhower education program. That has been a target on their cuts. One of their Presidents, one of their heroes, one of the people that the American people elected who served us well for 8 years in the Presidency in the decade of the 1950's and established this very foresightful, meaningful, important and successful educational program, they want to cut that as well. That is ow far they will go. It is astonishing, I think.

Mr. PALLONE. The amazing thing about it, too, is that it is not that the Democrats do not want to see tax cuts. Essentially, the difference is that we are talking about targeted tax cuts, or tax credits that would actually improve education, in other words; and I know the gentleman shares my feeling. We feel that if there are going to be tax cuts or there are going to be tax credits, they should be used in a very targeted way to help, to help education, to help with environmental concerns, and that what we do not want to see is just tax breaks that primarily go to wealthy individuals and do not help the average person.

When I was talking about these two tax cuts, the Hope scholarship for the first 2 years of college that the President has proposed, $1,500 for your first 2 years, and the $10,000 tuition education tax deduction, when I talked to my constituents about those kinds of tax breaks, they think they are great, because they know that paying for higher education is very difficult. They see that as a way of the Federal Government actually using the Tax Code, if you will, to help improve education and educational opportunities.

Democrats would like to see tax cuts or tax initiatives that actually give a break to individuals, but we want to use them in ways that are going to help our constituents, and not just throw money toward the large corporations or wealthy Americans.

Mr. HINCHEY. That is exactly right. It is the kind of thing we support. I think that is intelligent. I think it is intelligent to provide tax support for people who want to provide their children an education to be able to deduct those costs.

The cost of a college education, I think, makes eminently good sense, obviously, for the young person in that family, for the family itself, but also, very importantly, for the entire country, because our society benefits every time we graduate another person from college, another person with an advanced degree. That person goes out, applies that learning, and it is a synergistic effect.

It is a situation where all of this education coming together, working out there, higher and better education all the time, creates a circumstance where the whole is more than the sum of the parts. It is a very good investment, indeed.

But these guys here, the Gingrich crowd in this House, they have never seen a problem that a tax cut for a millionaire would not solve. They have never seen a problem that they do not want to throw a big tax cut out to the wealthiest people in the country. Their solution to every problem is, find the richest people you can in the country and cut their taxes, and that will solve your problem, because it is the people that they represent.

They have turned their back on middle class America, they have turned their back on the working people of this country by trying to cut their health care and the health care for their parents and grandparents, they have turned their backs on them by trying to cut the educational opportunities for their children, but they never turn their backs on the millionaires. They are willing to cut taxes for them every opportunity they get.

Mr. PALLONE. The amazing thing, too, if I could add, is that the President has been expanding these educational opportunity programs, you know, starting AmeriCorps, the National Service Program, moving to a direct lending program, increasing the amount of money for Pell grants, at the same time that he is reducing the deficit. The deficit, the actual deficit,

has actually been going down every year since he has been in office.

The reason you can expand programs, I will use the direct student loan program as an example. I think we talked about it before, how you are actually eliminating the bank as the middle person, so the money, if you will, that will have gone to pay for the bank's administration of services now goes to the college or university directly to pay essentially for more students to get a loan. So you are actually saving the taxpayers money.

You are eliminating the special-interest middle person, if you will, and the reason that the Republican leadership has been opposing that is because they get money from the special-interest bank or savings association, whatever it is, that actually is making that extra dollar; and, instead, you could abolish the middleman, save money for the taxpayers, probably millions or billions of dollars, and give more students direct loans.

That is what is amazing to me, that you have seen this administration actually expand the programs and give more educational opportunities at less cost and bring the deficit down.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. PALLONE. I yield to the gentleman from Ohio

Mr. BROWN of Ohio. Mr. Speaker, I appreciate the gentleman's leadership, and that of the gentleman from New York, and the work they have done on continuing to get education finally on the right track in this country.

We as a nation have come to a consensus pretty much about the role of local, State and Federal Government in education. No one in this body, certainly on the Democratic side, but I think on the Republican side, too, thinks that the Federal Government should come in and take over the schools and run all the schools' programs. But we have come to a consensus in that local government, by and large, controls the schools.

State government does much of the funding for education. But the Federal Government's role is very important and very precise. It is some support for Head Start, it is student loans, it is programs like drug-free schools. It is helping community colleges from time to time with Federal money. But it is limited.

What we have done is, we have protected, tried to protect that consensus. The leader of the other body, Mr. LOTT's comments were particularly amazing when he talked about education and job training as garbage amendments that Democrats want to put in bills. I do not quite understand what he meant, but I understand his attitude.

His attitude is that programs like drug-free schools and programs to help community colleges, like Lorain County Community College in my district, which is really the jewel of our county in terms of training a lot of people that are not just in their teens but in their twenties and thirties, going back, working full-time, going back to school and preparing for the future. That is so important.

We are finally, with the President's leadership and people like the gentleman from New Jersey, Mr. PALLONE, and the gentleman from New York, Mr. HINCHEY, in this House, aiming education in the right direction: giving tax breaks to people for college tuition, so middle class families can send their kids on to school; providing student loans and strengthening the direct loan program, as you suggested, Mr. PALLONE, so the middleman is cut out, and we can give those loans directly and not see banks and others basically take their cut off the top of these student loan programs or of these student loans.

One of the things that the President said, I think that makes the most sense with the Families First agenda and in the President's agenda, in the President's plan, is a 2-year college scholarship for students who maintain a B average.

In Elyria, OH, in my district, there is Lorain County Community College. That opportunity for students has given Lorain County the highest rate of 2-year associate degrees of any county, I believe, in all of Ohio. It has prepared people for all kinds of good employment, given people all kinds of opportunity.

I also know people that are going to LC, to Lorain County Community College, that have really struggled, because they have not been able to put together the money and raise their children while they are working. They have done all they could do to come up with money to go to school. They sometimes have been in and out of Lorain Community College and not been able to continue their education, uninterrupted.

The President's program will make sure that we are on the right track to be able to do that, so Lorain County Community College can continue to provide the sort of opportunities to get people, to get them into the middle class, to allow them to continue to stay in the middle class when their job is downsized and their company cuts back, as is happening all over this country.

For us to follow Mr. LOTT, the Republican leader of the other body, his idea to just junk some of these education programs and this job training, makes no sense. If we are going to compete internationally, if we are going to compete around the globe, we cannot cut education. We cannot end the student loan program. We cannot cut out the Pell grants. We cannot cut out the drug-free school programs and defund Head Start and some of these programs that have really simply provided an opportunity for America's middle class and poor kids.

There is nothing more important that government can do than provide opportunity, nothing. The best programs that come out of this institution, the best direction of government, is to help people have opportunity. Lorain County Community College has done that in Elyria, OH. All kinds of community colleges and other schools around the country have done that.

We have no business ever restricting opportunity. We should work toward expanding opportunity with student loans and tax breaks for parents in middle-class families to send their kids on to school, whether it is a 4-year university or a community college. It just does not make sense to do anything otherwise.

Mr. PALLONE. Mr. Speaker, I agree. The amazing thing about it is that we continue to hear statements during this presidential campaign from Mr. Dole saying how he is going to be the education President, or that he is going to prioritize education.

Yet we know from his own record that he has consistently voted against expanding education programs and that the President, President Clinton, in the last 4 years has probably done more to expand educational opportunities, particularly at the higher education level, college and for graduate programs, than anybody else.

I just saw it myself, but twice he came to my district in the last 3 years or so and talked about, he was at Rutgers University on both occasions, and talked about the National Direct Student Loan Program, the AmeriCorps Program. I have actually witnessed students that are involved in these programs, and they are just very helpful. They are not only helpful in terms of helping the students, but they also help the community.

For example, we have AmeriCorps students in some of the secondary schools that are basically supplementing the programs, the normal education program students get in school; you know, basically providing them with extra instruction after school or whatever. We have AmeriCorps students that have been working on clean water projects, basically testing the water in the Raritan River and looking for ways to try to do better, further cleanup.

So that program, just as an example, is one where students get money for college or pay back their loan. They are working in the community, so they build up a community spirit. At the same time, they are actually accomplishing something that helps people.

Mr. BROWN of Ohio. Mr. Speaker, if the gentleman will continue to yield, the gentleman said this benefits the community at large. There are about 40 million Americans today who have gotten some student loan or grant assistance from the Federal Government to further their educations. Some 40 million Americans have gotten this, whether it is the GI bill, Perkins, or some other program, direct loan, through the Federal Government, sponsored by the Federal Government, whatever.

Think, if the Government had not been involved in any of these, the GI bill or the student loans of any kind, or Perkins or whatever, think how many of those 40 million would not be able to contribute to the community the way they are doing. They are scientists, teachers, nurses, people who are working as electricians, people doing all kinds of things to make this society a better place.

If we had not provided those loans from the 1940's on, or those grants from the 1940's on, where would we be as a society? For us, all in the name, as Mr. HINCHEY said, in order to give tax breaks to the richest people in those countries, the only way to pay for those tax breaks, as the gentleman from New Jersey [Mr. PALLONE] has said on the floor, would be to cut Medicare, cut student loans. It is unconscionable.

To give tax breaks to the tune of $500 billion, as Mr. Dole is suggesting, or the $300 billion that the gentleman from Georgia [Mr. GINGRICH] has suggested, and tried to get through this House time after time after time, and actually shut down the government over, to give those tax breaks to the wealthy, the only way to pay for it is cuts in Medicare and student loans.

Why would we sacrifice potentially tens of millions of students who could benefit in the next decade or so, who could benefit from student loans, direct student loans, and various kinds of Federal grants and loans, why would we sacrifice them so we could give a tax break, mostly to people who do not need it, people making $250,000 to $300,000 a year?

Also they could give this break and really restrict the opportunity that millions of Americans, middle-class Americans and poor kids, would have in the next decade or so.

Mr. HINCHEY. There is an irony here also that should not be lost. There are a great many people in this Congress, including a great many who are advocating the abolition of student loans, or to make student loans more difficult, or the abolition of Pell grants, or to make Pell grants more difficult, or cutting of education in various ways, who themselves would not have had the opportunity for education if it had not been for the GI bill, say, for example, or Perkins, or a Pell grant, or something of that nature.

There is something terribly ironic and difficult to understand about that, how people who are here by virtue of the fact that they had help from the public purse in some way, at some point in their life, to expand themselves, to expand their careers and expand their opportunities, now want to deny that to another generation.

☐ 1715

I think that is terribly perverse at best. The example of student loans is just another one that I think just cries out for understanding. Where is the logic here, unless it is that you just want to provide a few extra dollars to some banker to make it more costly for a student to get an education, to make it more costly for the taxpayer to help provide educational opportunity for the next generation of Americans. And in denying that taxpayer the opportunity for a little lower taxes and denying the student the opportunity for education, you simply are just transferring that benefit to some banker who does not need it, by introducing some third party into the student loan process.

I think that making the student loans direct was one of the simplest yet one of the most effective things that the President has done with regard to the availability of higher education. I applaud him for it. I think anybody who recognizes the value of that program does the same.

Mr. PALLONE. I know from my own experience that there was no way that I would have been able to go to college or law school or graduate school without a combination of the student loan program, scholarships from the college or graduate school that I went to as well as the work study program. In fact, when the session began 2 years ago, the Republican leadership was also talking about either abolishing or cutting back significantly on the work study program. Again, how absurd.

Mr. Speaker, here we have students working their way through college. You would think that would be the epitome of a type of program we would want to keep, a work study program, but they were talking about cutting back on that. Plus a lot of people will say to me, particularly if they go to a private school, they will say, I got a scholarship from the private school or from an individual that donated money to the private school. But the fact of the matter is that a large portion of the money, whether they are private or public institutions, given out in scholarships, in other words, when a student gets a scholarship from the university, be it private or public, a lot of that money is also coming from the Federal Government. So it is not just the Pell grants, the Perkins loans, or the student loans. Even the money that is coming directly in scholarships from the college oftentimes a lot of that is coming from the Federal Government as well.

Mr. BROWN of Ohio. It is so shortsighted to think about making cuts in education, whether it is the student loan, the drug free schools program that, while Senator Dole runs around the country talking about drugs and illegal drugs that we have got to deal with it, and he votes and leads the charge against with Mr. GINGRICH, the leader of this House, to try to cut back on the drug free schools program, it is just so shortsighted.

When you think of what, as a nation, are we going to do if we cut these kinds of programs, these kinds of opportunities for kids to go on to school, whether it is a 2-year school, a 2-year community college, or 4-year degree at a State university or whatever. Interestingly, one of the things, as Mr. Dole has gone around the country talking about his $550 billion tax break, which is going to make these education cuts even worse that Mr. GINGRICH and Mr. Dole have already tried to pass through this institution that the President has vetoed, but as he has gone around the country talking about this $550 billion tax break, mostly for the wealthy, he has also promised group after group after group that he is not going to cut them.

He has said to military groups, I am going to increase military spending. He says to veterans groups, I am not going to cut you. But the other day he said most interestingly, I am going to double the amount of money that the Federal Government spends on prisons. So he is going to keep increasing this, this, this, and this, and what is left to cut? The only thing left to cut unfortunately is Medicare, Medicaid, Social Security, student loans, environmental protection. That is about all that is left in all the things he has talked about because he has promised every other group he is not going to cut them.

Mr. Speaker, it is interesting to juxtapose cutting education, putting it next to increasing money on prisons. If we are going to cut education, we are going to have to build more prisons. If we are going to restrict opportunity for middle-class kids, for working class or poor kids, we just better start planning to spend more money on prisons, more money on alcohol abuse programs and drug abuse programs, and all of that if kids do not have the opportunity when they are 18 or 22 years old when they finish school. Again, it is so shortsighted. To restrict kids' opportunity, to restrict people when they are 30 years old that are working in a job, and trying to go back to Lorain Community College or somewhere else and simply cannot scrape the money together, and the Government is not interested in helping. What are people going to do to stay in the middle class, to achieve middle-class status and lifestyles and stay in the middle class?

To me, our country in all the opportunities we have provided with things like the GI bill are to build a strong middle class. If we are going to just throw up our hands as a government and say, sorry, no more, the Government is no longer on the side of helping to provide opportunity for young people, we are just going to give up, give tax breaks to the wealthy and forget about opportunity and forget about education, I wonder what is going to happen to this country. It is a scary thought.

Mr. PALLONE. I agree. I know we do not have a lot of time left. I guess maybe we should wrap up at this point. I am just so glad that both of you came here and joined me to talk about this, because I know that Congressman BROWN kept using the term educational

opportunity. I think that is really what it is all about. We are not talking about handouts here to people who do not want to learn. We are talking about providing an opportunity so that everyone in this country can get an education at the highest level that they want and that they deserve and that they are willing to work for. That is what it is all about.

That is the promise, if you will, of America. If that promise is not there anymore, it makes it much more difficult for us to talk to our constituents or our children about equal opportunity. The equal opportunity just will not be there anymore. That is why I think it is really important that we continue to work toward that equal opportunity goal, particularly when it comes to education, which is so important for the future. I want to thank both of you for joining me.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today to take up a cause that is the No. 1 concern of millions of working parents and is an issue that the Republicans have called garbage. I am talking about the education of our children. I am talking about the future of our democracy and how we as a nation will take on the challenges of the 21st century. Let's look at the record of the Gingrich Congress. In 1995, the Republican Congress voted for the largest education cuts in history—slashing education programs by 15 percent or $3.6 billion. They voted to eliminate the funding for Goals 2000 School Reform which sought to raise the achievement levels of 44 million children. They voted to cut the Safe and Drug Free Schools Program by 57 percent—denying 23 million students services that keep drugs and violence away from children and their schools. They voted to cut Head Start by $137 million.

All of these cuts were in the face of the largest school enrollment in the history of our Nation—this is the time of the baby-boom echo. these are the children of the baby-boom generation that Republicans want to face their future with less resources for their education.

Finally, yesterday, the Republicans could no longer take the heat that they were shortchanging our Nation's schoolchildren and are now prepared to restore $2.3 billion of education cuts they took out of President Clinton's proposed spending for schools in fiscal year 1997. They now want to bury this issue and go home and try to forget about how they have done our children the worst disservice possible. How they want to forget that there are fewer teachers in the classrooms this fall because of what they did last year. They want to wash away their guilt when they see classrooms in school lunchrooms and even closets. We need to be increasing education funding, in light of growing school enrollments—not cutting. We need to invest more in our future and the future of our children.

Still, Mr. Speaker, Republicans have had the audacity to call our efforts to increase spending for education political garbage. Well, is it political garbage for working parents to see Republicans cut valuable funding for basic reading and math skills, Head Start, summer jobs for kids, school-to-work initiatives and Pell grants for college students. It may be garbage to them, but it's the key to our future.

So, don't be fooled by these 11th hour Republican conversions. Republicans can't go home now and undo the damage they have done to our schools. We have to keep up the pressure—Republicans can't be trusted with our children's education. This November, let's throw out the real garbage.

Democrats have a real agenda for working families that helps them to prepare their children for the challenges of the 21st century. Our Families First Agenda offers a brighter path for the future education for our children. It offers a better chance for helping get our kids to college.

With stagnating household incomes and the ever-increasing costs of a college education, American families are worried about how they are going to send their children to college. And what have the Republicans done to help? They have voted again and again over the last 2 years to slash student loan programs and to eliminate direct student loans. They have also voted to cut back on Pell grants and Perkins loans. All of this in the face of a fact that every working person knows—a college degree is a ticket to a higher income. It is a ticket to a better life and a life that is becoming more and more out of reach for greater numbers of people every year.

Families First Agenda includes a HOPE Scholarship Program that President Clinton offered in June. It would provide all students with a $1,500 refundable tax credit for full time students who keep up their grades. The HOPE Scholarship Program tries to make 2 years of college as universally accessible as high school is today.

This Democratic Families First educational initiative also includes a $10,000 tax deduction for education and training expenses. This deduction is up to $10,000 a year for each family. It would be available even for families that don't itemize their deductions. And this is in addition to the tax credit which is $1,500 for each student. It all adds up to help for families that want to see their children get a college education and have a better life.

Mr. Speaker, education is the key that will unlock our potential for the country's future. We have to at least help our families put the key in the door. Congress should not go home without giving our children a chance at a better life. We need to provide for safe and drug free schools and for strong investments in education and training of America's young people and workers. That, Mr. Speaker is the right way to prepare our country to compete in the world economy of the 21st century.

Mr. Speaker, we have finally gotten the Republicans to see the light. Quoting from the Washington Post of September 18, 1996:

GOP RESTORES $2.3 BILLION IT CUT IN EDUCATION FUNDS—REPUBLICANS WANT TO AVOID PREELECTION GRIDLOCK

Bombarded by Democratic charges that they were shortchanging the country's schoolchildren, Senate Republicans agreed to match President Clinton's proposed spending for schools by restoring $2.3 billion that Republicans had cut from education accounts for next year.

The GOP concession on education spending came only minutes before Democrats were prepared to offer a proposal to add $3.1 billion for education and job training to an Interior Department spending bill. Before they could offer their proposal, Lott told reporters Republicans were prepared to add back $2.3 billion for education alone.

CORRECTION TO THE RECORD OF SEPTEMBER 18, 1996, PAGE H10580, SPECIAL ORDER OF THE HONORABLE SONNY CALLAHAN

TRIBUTE TO THE HONORABLE TOM BEVILL AND THE HONORABLE GLEN BROWDER

The SPEAKER pro tempore (Mr. MCINNIS). Under the Speaker's announced policy of May 12, 1995, the gentleman from Alabama [Mr. CALLAHAN] is recognized for 60 minutes as the designee of the majority leader.

WATCH FOR ELECTION-YEAR SPIN IN HOUSE FLOOR SPEECHES

Mr. CALLAHAN. Mr. Speaker, it must be confusing to the people who are watching this, both in the gallery and on C–SPAN, about what we are talking about today. During this time of our political careers in history, it is an election year. It is like selling Coca-Cola and Pepsi-Cola. You have one side that says Pepsi-Cola is better, and one side that says Coca-Cola is better. What we do is create spin efforts. We try to convince the American people that one side is going to do all of these evil things, and the sky is going to fall if indeed a certain individual is elected President.

You hear things about cutting Medicare. There is not a provision anywhere in Washington where anybody has introduced or even suggested that we cut Medicare. All of this is partisan politics, trying to convince you, trying to manipulate you, the audience, into believing their side or our side of any particular issue.

They just talked about the environment. We are not going to destroy the environment. Not one individual in this entire body wants to do anything to do harm to the environment.

So as you go through these little periods of speeches on the floor of the House, keep in mind that it is that time of year. You are intelligent people. You can make your own mind up. Base it on character, base it on history, base it upon the future, base it on whatever you want. But keep in mind that these are like television ads. They are just a few minutes dedicated to the Members of the House to come here and express their views, and to try to convince you that the future lies in someone else's hands, or the future lies in the hands of those that have it today.

Spin is interesting here in Washington, because, you know, I heard the Secretary of Defense went over to Kuwait. I think all of us in the House knew, and certainly everybody in television land knew, and certainly, Mr. Speaker, you knew, that the Kuwaitis decided they did not want us there, even though we sent 500,000 men over there to save their country. When we tried to send 3,500 men there, they balked. But in any event, the Secretary went over there and he explained it. Finally, they let us come in.

But the spin that came out of it, and I quote the Washington Post, Mr.

Speaker, it said that the Kuwaitis are inviting us over there to protect their interests. That is spin.

But for the next hour, we are not going to be partisan. We are not going to be Republicans, we are not going to be Democrats. We are going to be telling you some of the things that have taken place during the last several sessions of the Congress, and about two or three individuals that have been an integral part of that. They are two Democrats, and I am a Republican, but there are two Democratic Members of the House who are retiring from Congress this year.

I have requested 1 hour of this time to come in a nonpartisan sense to talk about these two individuals, these two Members of Congress that have made a tremendous contribution to this country during the time that they have served.

We have not always agreed. We agreed generally only on those things that were very beneficial to Alabama, because in the Alabama delegation, unlike some of the other delegations in this Congress, we work together, whether we are Democrats or Republicans. If we have a problem, if we have a need in the State of Alabama, the delegation meets on a monthly basis and we discuss with each other the needs, and why we need it.

I had a home port in Mobile that I was trying to get and got it, because I brought it to our delegation. I said, I need the help of all seven of you. We have things in Huntsville, we had an Army base in Anniston that one of our Members had some problems with. We always work together.

Some States do not work together on anything. Some Democrats never work with Republicans, and some Republicans never work with Democrats. But in Alabama we have been blessed, blessed to have seven members of our delegation who do work together; who do not always agree on the national issues, who do not always agree on individual bills, but who do have a guidance and a direction that moves toward a better America and a better Alabama.

The gentleman from Alabama, Mr. TOM BEVILL, from Alabama's Fourth Congressional District, married to Lou, has three lovely children; born in Townley, AL, the son of a coal miner, he attained the rank of captain in the U.S. Army while serving in the European theater during World War II.

□ 1545

He holds an LL.B. degree from the University of Alabama School of Law. He was first elected to the House of Representatives in 1966.

He was chairman for most of this time of the Appropriations Subcommittee on Energy and Water Development, from 1977 to 1994. As chairman, Congressman BEVILL encouraged substantial development of Alabama's waterways and the Port of Mobile and all the waterways and all of the ports of this entire Nation. For example, he was instrumental in the development of the Tennessee-Tombigbee Waterway. This development allowed the United States to assert its full power in international trade. He remains the ranking member of the Subcommittee on Energy and Water Development even today.

The other Member retiring is GLEN BROWDER from the Third Congressional District of the State of Alabama, married to Becky. They have one daughter, I think a student at Auburn. At least they live near Auburn. He holds a Ph.D. in political science from Emory University in Atlanta. He served as a political science professor at Jacksonville State University, served for 4 years in the Alabana State House of Representatives, and was elected to Congress in a special election in 1989. He serves on the House Committees on Budget and National Security. While serving on these committees in the House, Congressman BROWDER has exerted an influential, fiscally responsible philosophy. As I have said, we did not always agree on some national issues. But you could never, never worry about the integrity of these two individuals, or about the word of these two individuals. If they told you they were not going to vote for you, you just as well put it in your hat to know they were not going to vote for you, not because they disliked you, not because I was a Republican, but because they disagreed with me. And that is the way this body works. It is made up of 435 individual men and women from all walks of life, from all of the States. All of us have had some degree of success in our other lives or we would not be here today. You do not elect unsuccessful people to Congress. You elect people that have been responsible people and leaders in their community.

So while there is bickering between these two on all these partisan issues trying to convince you through their statements to vote for either Bob Dole or for Bill Clinton or to tell you that there ought to be a Republican majority versus a Democratic majority in the House, keep in mind that all of that is partisan spin politics. You are the people who make that decision, and I trust your decision.

We have only 1 hour today to talk about these two individuals, these two great Americans, and dozens of people have called and dozens have asked to come and to share with me this 1 hour that we have to pay tribute to these two great American people.

The first is a friend of mine from Indiana, Congressman JOHN MYERS. He is going to retire as well, but now he is chairman of the same subcommittee that TOM BEVILL once chaired.

Mr. MYERS of Indiana. Mr. Speaker, we thank our friend, the gentleman from Alabama, SONNY CALLAHAN, for taking this hour to remember and honor 30 years of service of our colleague.

On November 8, 1966, 72 new Members were elected to Congress, 59 Republicans and 13 Democrats. Today, there are three of us in that class remaining in the House of Representatives, and as has been mentioned already, all three of us have chosen this 30th year in Congress to retire: Congressman MONTGOMERY from Mississippi; the person we are honoring this afternoon, TOM BEVILL of Alabama; and I am from Indiana.

That class, there was another Member who went on, had trouble keeping a job here, served only 4 years in the House, but I talked with him this morning, former Vice President and former President of the United States, George Bush, said for me to extend best wishes and congratulations to TOM BEVILL and SONNY MONTGOMERY for their 30 years of service.

TOM, as I call him, has served 18 years as chairman of the subcommittee where we both have served those 18 years, and I served those 18 years as his ranking member; and the past 2 years, because of the election, I have been given the honor of holding the chairmanship and TOM has been the ranking member. But the relationship never changed; it is completely, absolutely nonpartisan.

TOM is a gentleman. Nothing went into a bill unless we both agreed, when he was chairman. The last 2 years, with the confrontation of a few people, partisanship does not play a role in our subcommittee; it continued the same way. The country was more important.

TOM grew up in Alabama, was born in Alabama. His family had a little country store, and TOM worked as a clerk in that country store, growing up. It was a coal mining area. He went on to graduate from Walker County High School in Alabama, went on to the University of Alabama, where he got his law degree, and then served in Europe in World War II.

He came back and practiced law for 18 years in Jasper, AL, where they still claim home. But the thing in Alabama, and I have visited his district many, many times, both Democrats and Republicans voted for TOM BEVILL because they knew they had a person that was fair, and just as the gentleman from Alabama [Mr. CALLAHAN] mentioned here, would tell you the truth and you knew you were not getting doubletalk. They loved TOM BEVILL and they still love TOM BEVILL.

So he is going to go back home, I understand, and be an Alabamian once again, go back with his wife, Lou. His wife, Lou, my wife, Carol, the two couples have been friends for the 30 years we have had the honor of serving together in this Congress, but TOM and Lou BEVILL are true great people. Their three children and their grandchildren, I know they are going to enjoy.

So today I am pleased to be able to join the many friends that TOM BEVILL has to say thank you, TOM, for your years of service and thank you for your courtesy. Thanks for being a gentleman all of those years when we served together.

Mr. CALLAHAN. Mr. Speaker, I yield to the gentleman from Mississippi, SONNY MONTGOMERY, another gentleman that is retiring this year, who was just mentioned by the gentleman from Indiana [Mr. MYERS].

Mr. MONTGOMERY. I thank the gentleman from Alabama [Mr. CALLAHAN] for giving me this opportunity, and I would like to pay tribute to both TOM BEVILL and GLEN BROWDER on their retirements.

Mr. Speaker, I am pleased to speak today about our longtime friend, TOM BEVILL. TOM and I both, as mentioned by JOHN MYERS, started as freshmen together. We have been friends ever since. That was 30 years ago. During that time, I have to say that there has never been a better representative for Alabama or for this Nation than TOM BEVILL.

Mr. Speaker, he served in the European theater during World War II and attained the rank of captain. We three, TOM BEVILL, JOHN MYERS and I, all three served in the European theater. We did not serve together, but we were there at the same time. So coming to Washington for TOM BEVILL was not a tough, big problem; because he had been in the war, he knew that he could handle the job.

His constituents are very proud of him. He has had an excellent record with the people of his State and his congressional district. Mr. Speaker, he might have had a tough race the first time he ran, the first 2 years, but after that, he has been elected without opposition and really has had no problems coming to the Congress again.

As has been mentioned, he is the senior member of the House Committee on Appropriations and served as chairman of the Subcommittee on Energy and Water Development from 1977 to 1994. He is now the ranking member, as we all know, and he and JOHN MYERS worked together so well. He did have a lot to do with the Tenn-Tom waterway system which goes between our two States, Alabama and Mississippi.

Mr. Speaker, on the Tenn-Tom, there is a lock and dam that bears the name of Tom Bevill Lock and Dam. And our congressional districts adjoin each other. But the biggest sign in my congressional district is Tom Bevill Lock and Dam and the sign points that way. I tease him a lot about that, but it is the biggest sign in my congressional district.

I have enjoyed having TOM BEVILL be a part of the prayer breakfast group, and PETE GEREN of Texas asked that I would mention about TOM BEVILL, he is known as the assistant to the assistant chaplain at our prayer breakfast. He does not get to act much, but he does come a lot, and we have enjoyed very much working together.

So about TOM, Lou has been wonderful. He has got three wonderful children. I wish him the best.

Moving to GLEN BROWDER, we are very proud of GLEN and what he has done since he has been in the Congress. I serve with him on the Committee on National Security, and he has performed his duties as well as any Member I know. Fort McClellan, AL, is in his congressional district. He has actually himself, with help from the other Members of the Alabama delegation, saved Fort McClellan, AL, from being closed. Fort McClellan has been on the base closure list for a number of years. I know for sure he has saved it for 2 years in a row.

We wish GLEN, his wife, Becky, and their daughter, Jenny Rebecca, the best in the future. GLEN, Washington and the House of Representatives will miss you.

Mr. CALLAHAN. Mr. Speaker, I would like to yield just a few minutes to one of the individuals we are retiring. To show you what kind of individual he is, he is here to give praise to the other Member we are talking about, Congressman TOM BEVILL of Alabama.

Mr. BEVILL. Mr. Speaker, I thank my good friend and colleague, Congressman CALLAHAN.

Mr. Speaker, I rise today to pay tribute to my good friend and colleague from Alabama, Congressman GLEN BROWDER.

GLEN is leaving office with a fine record of service to Alabama's Third Congressional District since 1989. As you know, GLEN was elected after the death of our long-time colleague Bill Nichols.

While no one could replace Bill Nichols, GLEN certainly has done an outstanding job picking up where Congressman Nichols left off. He has made a name for himself as a quietly determined, highly intelligent and well-focused Member of Congress.

Like Bill Nichols, GLEN BROWDER won a seat on the House National Security Committee where he has become a very effective advocate on a wide range of military issues. He fought to keep Fort McClellan off the base closure list and developed broad expertise on the use and storage of chemical weapons.

He has worked diligently on behalf of Persian Gulf veterans who have suffered strange symptoms since returning from the conflict with Iraq. GLEN has pushed the Pentagon to provide more information on their potential exposure to chemical agents.

GLEN BROWDER has always been fiscally conservative and has provided outstanding leadership on campaign reform issues and budget matters.

I have thoroughly enjoyed working with GLEN BROWDER, especially on projects of concern to Alabama. He has always been very dedicated, not only to his district, but also to our entire State of Alabama and our Nation.

Whatever course GLEN BROWDER chooses to pursue, I am confident he will be highly successful. Meanwhile, his accomplishments here in the Congress will always be remembered and appreciated.

GLEN, I wish you and your lovely wife Becky all the best in your future endeavors.

Mr. CALLAHAN. Mr. Speaker, at this time I would like to recognize, he has a conference he must attend, a little bit out of order but nevertheless not out of order with respect to his vitality to this conversation, Mr. ALAN MOLLOHAN of West Virginia.

Mr. MOLLOHAN. I thank the distinguished gentleman and chairman. I appreciate very much his making possible this special order.

Mr. Speaker, I thank you for allowing me to take the floor today for this fitting tribute to our distinguished colleagues from Alabama, TOM BEVILL and GLEN BROWDER. I am pleased to add my personal words of appreciation for their contributions to this House and to offer my best wishes to each of them as their terms come to a close and as they look to their future.

I had the great pleasure of serving with GLEN on the Committee on the Budget. He is particularly distinguished, bright, makes a wonderful contribution to that committee and brings a lot of common sense to the process. I know that he will prosper as he leaves the House and I certainly wish him well.

Naturally as a member of the Committee on Appropriations, I will acutely feel the absence of the gentleman from Alabama [Mr. BEVILL] and the leadership that he has provided to that committee as chairman and the ranking member of the Subcommittee on Energy and Water Development.

□ 1600

He is one of the most respected members of our Committee on Appropriations and the entire U.S. House of Representatives, and it saddens me greatly to see him go.

For a long number of years, my father, who served in this body, served with TOM BEVILL, and dad always considered him to be as close as you could come to the ideal of a Member of Congress.

Since taking up the responsibilities of representing the First Congressional District here, I have found that dad is absolutely right. TOM BEVILL is bright, he is disciplined, he is full of integrity, and not only courteous but he is kind. These are the qualities that have made him an effective, popular Representative of the people of Alabama's Fourth Congressional District. They are the same qualities that have made him a widely admired Member of the House.

Of course, he has made his mark through his years of leadership of the Energy and Water Development Subcommittee. That can be a tough job. There are so many worthy projects brought to the attention of this subcommittee, real needs, urgent needs in communities all across the Nation, yet even in the best of times there are simply not enough resources to go around.

Being able to take up as many of them as possible and blend them into a thoughtful national policy, well, that is a real legislative art, and TOM BEVILL is the master of it.

Mr. Speaker, I doubt there is a district anywhere that has not benefited in some measure from TOM BEVILL's commitment to meeting America's energy and water development needs. His good work will be remembered long after he leaves this body. So, too, will his gracious manner and the good will he has consistently shown to Members on both sides of the aisle.

That is a real hallmark of his service. In fact, he has worked hand in hand in a real bipartisan spirit with another very distinguished and retiring Member of this House and of this committee, the gentleman from Indiana, JOHN MYERS.

JOHN MYERS has been equally an outstanding servant of the people. They are both wonderful men and a powerful legislative team.

TOM BEVILL is a true gentleman, as well as a distinguished legislator, and he will be missed sorely. Thank you, Mr. BEVILL, and thank you, too, Mr. BROWDER, for your faithful service to this House and to the people of West Virginia, and my best personal best wishes go with you.

I also want to share with you the great expression of appreciation from the constituents of the First Congressional District of West Virginia for all your consideration of their needs over these many years. God bless.

Mr. CALLAHAN. Mr. Speaker, at this time I would like to recognize one of the gentlemen we are talking about today so he can pay honor to the other gentleman we are talking about today. I am talking about Mr. BROWDER of Alabama.

(Mr. BROWDER asked and was given permission to revise and extend his remarks.)

Mr. BROWDER. Mr. Speaker, I want to thank SONNY CALLAHAN, my good friend and fellow Alabamian, for arranging this special order and for all who are participating here.

I was in the gallery with my wife, Mr. Speaker, and I heard TOM BEVILL speaking about me and now it is my turn to speak about him.

For the past 30 years, TOM BEVILL has been representing our State and our country with distinction and dedication. His sincere interest in the betterment of this great land of ours has meant a great deal to many of our districts.

In my own district of east Alabama, for example, TOM BEVILL has exercised his leadership to help Alabama, Georgia, and Florida avoid a nasty scrap over the water resources we share. Because of the work and studies he sponsored, we seem to be moving toward a regional understanding on this vital issue.

TOM served 18 years as chairman of the House Appropriations Committee's Subcommittee on Energy and Water Resources. There is not a State in this country that is not a better place because of TOM BEVILL's work and his knowledge. Without a doubt he will leave an indelible imprint on our country that cannot be erased and will not be duplicated.

TOM has always been a special friend. He introduced me to the House when I was sworn in as a Member after a special election in 1989. At a time like that, it is nice to have a man of his stature speaking for you.

TOM has the respect of Members on both sides of the aisle. He has earned this respect by his hard work, his attention to detail, and his willingness to help another Member, even when there is no political gain for himself.

On this occasion I also want to mention TOM's lovely wife, Lou, who is as strong and caring a person as TOM. I wish them both the best for all they have done for Alabama and the rest of the country.

Mr. CALLAHAN. Mr. Speaker, I thank Mr. BROWDER for his kind words and for his service.

I want to now introduce my next-door neighbor, the man who represents the congressional district next to mine, Congressman TERRY EVERETT, of Alabama.

Mr. EVERETT. Mr. Speaker, I would like to first thank my colleague, SONNY CALLAHAN, for giving me and the rest of us this opportunity to offer a personal tribute to two of my colleagues who leave this House having earned very distinguished records of service. TOM BEVILL, the Fourth District of Alabama, and GLEN BROWDER, of the Third District, are well-known to the people of Alabama for their active leadership to Alabama and the Nation.

TOM BEVILL is the dean of the Alabama delegation here in Washington, having been elected to this body 30 years ago. TOM's gentlemanly manner, his character, and his great legislative skills have earned him the respect of his peers.

Having served as a long-time chairman of the House Appropriations Subcommittee on Energy and Water Development, TOM's influence has, as has already been noted here, today has been felt over the entire Nation for decades in major energy research development and public works projects from coast to coast.

At home in Alabama, Chairman BEVILL led the drive to build the Tennessee-Tombigbee Waterway. We heard Mr. MONTGOMERY talk about signs in his district, in Mississippi, naming something after Mr. BEVILL. There is a joke that you cannot travel through a single town in Mr. BEVILL's district in north Alabama without seeing the Bevill name on a building somewhere. And while that may be true, let it also be known that there is a Bevill building on the campus of Sparks State Technical College in Eufaula, AL, down in my district in southeast Alabama.

TOM and his wife, Lou, will be missed here in Washington after January, but they certainly deserve a much earned rest back home in Jasper. I wish them both the very best, and I know that TOM will have more opportunities to meet with my good friend, our mutual friend, Doug Pearson, for coffee more often.

Mr. Speaker, I also want to speak about another departing colleague, GLEN BROWDER of Alabama of the Third District. GLEN BROWDER came to Congress in a special election in 1989 to fill the unexpired term of the late Congressman Bill Nichols.

GLEN, who sits with me on the House Committee on National Security, quickly proved his mettle in successfully blocking three out of four Base Closure Commission attempts to close Anniston's Fort McClellan Army base.

GLEN also made a name for himself as a budget hawk by gaining a seat on the House Committee on the Budget and adding focus to the congressional effort to reach a balanced budget. GLEN's fiscal conservatism and hard work in support of our Nation's military and veterans will be very, very much missed.

I wish him and his wife, Becky, the very best as they return to Jacksonville, AL.

Mr. Speaker, both these gentlemen have given great service to Alabama and to the Nation and have extended great courtesy to me personally and I thank them. God go with them.

Mr. CALLAHAN. Mr. Speaker, I thank the gentleman from Alabama, and at this time we are going to go outside the State of Alabama, Mr. Speaker. I yield time to the gentlewoman from Arkansas, Mrs. BLANCHE LINCOLN.

Mrs. LINCOLN. Mr. Speaker, I thank the gentleman from Alabama for yielding. I, too, Mr. Speaker, rise today to pay tribute to two fine gentlemen from the State of Alabama. I am also proud to be here among the other folks that are here paying tribute. I find myself in excellent company.

I have had the privilege of serving with these two gentlemen for my tenure here in the Congress. I feel like it has been a real honor to be along their side.

Congressman TOM BEVILL has served the Fourth District of Alabama with distinction since 1966, but in many ways he has served all of our districts at one time or another. As chairman of the Energy and Water Appropriations Subcommittee from 1977 to 1994, Congressman BEVILL has probably been more instrumental than any Member in protecting, preserving, and managing America's water resources.

His charge has not been an easy one in distributing an ever-shrinking amount of funds to an ever-increasing number of worthy projects from around the Nation. Yet he has always been fair and nonpartisan in his work, and his word is ironclad.

When I first came to Congress 4 years ago, the appropriations process was an unintelligible maze to me. In an effort to understand the process better and to serve my district, I went to TOM BEVILL for advice. It could have been a very intimidating experience, a young woman, new on Capitol Hill, visiting a

powerful chairman, but it was not. TOM BEVILL welcomed me as an equal and treated me with the utmost of respect. He helped me learn more about the process and was instrumental in guiding several landmark Arkansas water projects through the Congress, one on behalf of the people of the First District of Arkansas. I want to thank him for his hard work on our behalf.

I know that Mr. BEVILL's best days are ahead of him as he leaves Congress to return to his life of a private citizen. I want to wish him and his wife Lou the best.

There is one story I think that I must share with the rest of my colleagues, and I think it says a little bit about Mr. BEVILL that we all really know.

Not only has he served the people of this country and of Alabama and all of our other districts well, he has done so in a very wise and gentlemanly way, but he has not forgotten the important things in life. One day as we sat on the floor here, Mr. BEVILL and I were visiting, and I had on a red jacket. And he looked at me and he said: I see you in that red jacket and, he said, I am reminded. My wife was wearing a red jacket the day that we first had our—I think it was the day you proposed to her, perhaps? Or maybe it was your first date.

TOM BEVILL does not forget, and he does not forget the most important things in life. He has served us all very well in this institution. He served our Nation and the folks of Alabama. We would all do well to follow the example of his career, commitment, fairness, grace, and humility. TOM BEVILL is the kind of Member and person that we all strive to be, and I am proud to have served here with him and to have learned so much.

Mr. Speaker, I also want to say a word about my fellow Congressman, GLEN BROWDER, from Alabama's Third District. I have had the true honor of serving as a blue dog with GLEN during the 104th Congress. GLEN, like myself, is a founding member of this notorious band of independent Democrats. We have worked hard for that name and have had a great deal of fun with it.

The blue dog mission, however, has been about meeting two principal goals: balancing the budget in a fiscally responsible as well as a fair way, and bringing commonsense solutions to Washington, DC.

Since coming to Congress in 1989, GLEN has never swayed from those goals. He was instrumental in crafting the blue dogs' balanced budget and had an active voice in all of our policy decisions.

I am not sure what GLEN's plans are for the future, but I certainly know he will bring the same dedications and honor to his new endeavors as he has to his work here in Congress. I join my colleagues in honoring these two gentlemen, and I wish them Godspeed in the future ahead for both of them.

Mr. CALLAHAN. Mr. Speaker, I thank the gentlewoman from Arkansas, and I now recognize the gentleman from north Alabama, Mr. CRAMER.

Mr. CRAMER. Mr. Speaker, I thank my colleague from Alabama. I, of course, want to stand here today to pay tribute to two of my best friends, TOM BEVILL and GLEN BROWDER. I joined this Alabama team in 1991, so I have been here for 6 years. During that time the entire Alabama delegation taught me that Alabama has a notorious reputation for sticking together. We put Alabama's issues first, we put our party labels second.

□ 1615

And they demonstrated that all of the time that I was here. Of course, TOM BEVILL and I represent all of north Alabama. I have many industries in north Alabama that are dependent for their jobs on Federal budgets, like the NASA Marshall Space Flight Center and the Army presence at Redstone Arsenal. I have the Tennessee Valley Authority in north Alabama, as well.

We have so many connections to the Federal budget that if any part of it is squeezed, we feel part of the pain from that squeeze. TOM BEVILL jumped from the get-go when I got here to make sure that I had available to me his position of power, as I would put it, not as he would put it, there on the Subcommittee on Energy and Water and on the Committee on Appropriations, as well.

Whenever I needed to fight a battle, I could fight that battle with the presence of TOM BEVILL, literally. Tom and his wife Lou, his daughters Patty and Susan, and his son Don, are like family members to me, so it is very difficult for me to think of losing TOM BEVILL to this institution, much less as part of my professional life here in the Congress.

But as I stand here today in the presence of JOHN MYERS, and SONNY MONTGOMERY who left here, and listen to them talk, as I have both today and days before today, about their experiences here together and separately in this Congress, it makes me think that they just do not make people like that much anymore. They are all three illustrations to those of us here now that the behavior that we sometimes fall into does not have to be fallen into.

These are men who work well together. They put their partisan politics to the side. There is an appropriate place for that, but they bring into this institution daily a professionalism that would be hard to match this day and time. We are going to miss all three of them.

My colleague, GLEN BROWDER, was slightly behind me in his tenure here. I should say ahead of me; he came here slightly before I came here. And GLEN was, as well, an Alabama team member available to me when I got here; from Jacksonville State University, where he served on the faculty at that fine Alabama educational institution. He served also in the Alabama State House. He was Alabama Secretary of State as well. He brought that Alabama background to our Alabama team.

Of course, when you come to Congress you do not get to be on every committee you want to be on. GLEN was on the Armed Services Committee and, as I said, with our presence in north Alabama at the Redstone Arsenal, with the jobs that we had there, often I had to go to GLEN and say, ''We in the Fifth District need your help.'' And he was available to me just as the rest of the Alabama team was available to me. And because I have the kind of district that I have, I was often turning to GLEN for advice about how do I get ready to fight NASA's battles on the floor or how do I help my district with the weather service issues that we constantly have there? And he was always available to help me, whether that meant meeting with constituents there or whether it was joining with me to lobby on the floor to win the victories that we needed to win.

GLEN, to you and your wife Becky, and daughter, I will lose you as family members, as well. I have enjoyed your presence and your moral support here in Congress. You, as well as TOM BEVILL, represent the kind of personality and professionalism that I want to be a part of while I am here. We will miss you, but we will look forward to seeing you and working with you in different ways. TOM BEVILL, GLEN BROWDER, we will miss you. Alabama thanks you, as we should.

Mr. CALLAHAN. Mr. Speaker, I now yield time to the gentleman from Kentucky [Mr. ROGERS].

Mr. ROGERS. Mr. Speaker, I thank the gentleman for yielding and for taking out this special order to honor two of the very distinguished Members of this body who happen to be from the great State of Alabama.

GLEN BROWDER, whom we have known since he came here, one of the great and distinguished Members of this body who has served our country so very, very well in his tenure. And GLEN, we wish for you the best in your future endeavors, and we are going to miss your service around here. We hope we do not miss your company. We hope you will come back and be with us all the time that you can.

Of course, the other Member who is being honored here today, TOM BEVILL, whom I have had the pleasure of serving with not only in this body but in the committee and on his subcommittee of recent years, I do not know how I can summarize this man's life in Congress in 2 or 3 minutes. In fact, I do not think I can. But I am reminded of something that was written some years ago that I think applies to TOM BEVILL as well as anything that I could say, and I am just going to quote it.

The writing was, ''Real generosity is doing something nice for someone who will never find it out.''

And, Mr. Speaker, there are thousands of people in my district and in every district in this country who

would not know TOM BEVILL's name and yet who have benefited magnificently from his work here in this body. He has been so many things to so many people, touching the lives of millions of people who would not know his name if they heard it and likely never will.

And that is the nature of the labors of TOM BEVILL. To his colleagues, he is both the quiet, genteel, gentle man who served as chairman of a very powerful subcommittee of this body, and he is a very caring southern gentleman in the corridors of this Capitol.

To his constituents back home, he was and is a man and leader who rose to one of the most powerful positions in the Federal Government and yet never forgot where he came from, where he lives, who he is, who sent him here, and what he could do for his district and his Nation.

And as has been said, the evidence of his devotion to his people back home is evident in every corner of his district in Alabama. And not just in his home district, as TERRY has said, but throughout the State of Alabama and certainly throughout the Nation.

His support for higher education is symbolized by the tremendous assistance he has been to the University of Alabama. His appreciation for his State's lands and rivers. I mentioned the Little River Canyon National Preserve as one star in his crown. And, of course, as has been mentioned, the Tennessee-Tombigbee Waterway. I will not forget going down to the dedication of that great economic boost to the entirety of the Southeast United States, and being so proud to stand there as TOM BEVILL was lauded by the people of his home region and the rest of this country for that signal improvement to the Southeast.

And of course I have been a very close friend with TOM over the years on so many fronts, but one comes to mind immediately, and that is his tremendous work on behalf of the Appalachian Regional Commission, a region that we share, and the ARC would not exist today had it not been for the work of TOM BEVILL. It would have been done away with years ago; certainly the funding would have been sliced to a negligible amount.

The same can be said of the Tennessee Valley Authority, which has meant so much to the economic growth of the entire South. And since TOM BEVILL has been here, the TVA has had no bigger and better or more effective supporter and promoter than TOM BEVILL.

We could talk about the silent work that he has done for which there is no notoriety or credit, even dating back to his very first days in the Congress, on this committee responsible, among other things, for the Nation's nuclear capability. It is this subcommittee that TOM BEVILL chaired for so many years that funded the Nation's nuclear weaponry, and of course that had to be done in supersecrecy.

And I know personally of the long hours that TOM BEVILL has sat and worked with the most powerful weaponry known to mankind, being sure that this Nation was prepared in the eventuality of that awful event of Armageddon. And through most of the cold war era it was TOM BEVILL who sat in the hall and decided how much money would be spent and for what in the Nation's preparation for our nuclear protection. That is a thankless job that TOM BEVILL did with great effectiveness and pride.

But my personal point of view, my district's point of view, there are literally thousands of people today in my district who are now protected from the ravages of nature, flooding, that TOM BEVILL saw to. And I suspect a great many Members of this body can say exactly the same thing, but I can say it with feeling, as can they, that TOM, our people thank you for your dedication to their well-being; people who never saw, people probably that would not recognize your name, except when I tell them who did it, that are now protected from these almost annual ravages of having their homes washed away, their family Bibles destroyed, their family pictures washed away. Everything they have would be gone. Today they can say they are safe because of your service to your country and to them in this great body. The infrastructure of our country has done well because of your tenure.

I am reminded of two stonecutters who were asked the same question, and I say this because TOM BEVILL kept in mind why he was here all the while. He did not waiver. He did not wander, he was always there. Two stonecutters were asked the same question: What are you doing? The first one said, ''I am cutting this block into two pieces.'' The second one, though, said, ''I am on a team and we are building a cathedral.''

TOM has been on the team, and he has been building not a cathedral but a much, much better America, and for that we are eternally thankful to him.

I have to say this in closing, too. His wife, Lou, was one of my and my late wife Shirley's best friends. These two people, as his close friends and even distant friends know, are two of the best people that God ever created. Lou, an accomplished musician among other things in her life, is a true American and a great American, and someone that we are going to miss almost as much as TOM, if not more so. But we are going to miss the service of a gentle man. He was gentle, and yet when it came to the things that he believed in, a better America, he was tenacious and he persevered and at times was even ferocious in his defense of these things so important to him, his district, and our people across the country.

I know that TOM and Lou are going to enjoy the next phase of their life. We hope for the very, very best. We hope that they will at least come back and honor us with their presence, because we are going to sorely miss their personal friendship in their absence from us for what time they are absent.

So, TOM, in your next phase of your life, we wish you Godspeed.

Mr. CALLAHAN. Mr. Speaker, I thank the gentleman from Kentucky. And I now recognize the gentleman from Alabama [Mr. BACHUS].

Mr. BACHUS. Mr. Speaker, I thank Mr. CALLAHAN.

Mr. CRAMER mentioned the Alabama delegation and what a special group I think we are. I think he said it better than I would have said it when he said that party labels come second. We put the interest of the State first.

We have not had the partisan wrangling that we have sort of seen in this Congress in our delegation. We really like each other, we work well together, we cooperate together. It is the sort of bipartisanship that this country needs, and you see it in the Alabama delegation. And I think that the two gentleman we are here to give tribute to today are two of the big reasons for that.

GLEN BROWDER and TOM BEVILL, you all were here before I came. You worked well together. You worked well with SONNY CALLAHAN and Bill Dickenson, and you sort of established that tradition in the Alabama delegation, something that I benefited from, something that the State of Alabama has benefited from, our delegation, working together for the good of the State and for the Nation. And, first of all, I think that is a legacy that you all will leave with those who stay behind, that we will continue as an Alabama delegation to put aside petty politics and party labels for the best interests of our State.

☐ 1630

So I compliment you first for that.

Second, I compliment you for the fact that you have been a good example to me, both of you. When I came here, I came into a Congress where I was a Member of a minority party. And probably the first month I was here, the first legislation that I decided to sponsor, a little piece of legislation, saved a little bit of money in the total picture, but I went to TOM BEVILL. I am not sure at that time I appreciated that he was a powerful cardinal on appropriations. I probably did not even know that I was not supposed to be approaching him at the time, but I approached him and I asked him to cosponsor my bill with me.

He could have said, I am not going to cosponsor a bill with you. You are a little Republican freshman and I am not going to give you the benefit of my reputation. It is too small a bill. It is just too inconsequential. I am working on important issues that affect this country every day. I do not want to give a young Republican Congressman anything that might give him an advantage.

But, no, Mr. Speaker, he put all of that aside. He saw that it was good legislation, and he cosponsored it with

me. I was able to get Members on both sides of the aisle to join with me in that legislation because TOM BEVILL's name was on that legislation.

I will never forget that, TOM. Mr. ROGERS from Kentucky, his district and your district are very much alike. One is in Kentucky; one is in Alabama. But they are Appalachia. They are hard-working people. They are God-fearing people. And he much better than I could describe, he served with you here longer. He has known you and Lou, he and his late wife Shirley. You all were good friends. He knows you man to man. He can much better talk about your legacy than I can. I enjoyed listening to that. I can simply say that I second everything that he said in that regard. He certainly gave a wonderful tribute to you.

I would only add to that by saying that I have been so impressed with your wife, Lou Bevill. She sort of, I guess if you pick out someone that you want your wife to sort of use as a role model, because she is here, she is up here and she, as my wife is, they are both here with us during the week. I am so impressed with her, her and Mike Heflin. It is hard to talk about GLEN BROWDER and TOM BEVILL without thinking about Senator HEFLIN because that is sort of a dynamic trio that we are going to be without. I am going to miss you; I am going to miss Lou. I am going to miss Senator HEFLIN, and I am going to miss Mike. It is hard to think of you without thinking of Lou. It is hard to think about Senator HEFLIN without thinking about Mike. I wanted to tell you how much I appreciated her and her example.

Mr. EVERETT mentioned the joke about every building in north Alabama having a Bevill center. I told you about a year ago at a reception that we had, I was actually trying to describe a town in your district to someone. And I described it as having a railroad that ran through it and about two traffic lights. It was on Highway 78. That really did not give them much of an indication.

I remembered that there was a building in the town that said the Bevill Building. I said, it has a building named after TOM BEVILL. And actually this person's remark back to me was, You have not eliminated one town on Highway 78 by saying it had a Bevill Building in it.

So you have left behind in your district a better place and something that you can be proud of.

They mentioned the University of Alabama. You have been committed also to our community colleges in Alabama. Even as a member of the State legislature, GLEN and I preceded you several years later, but you were one of the first in Alabama to recognize that not everybody could go to the University of Alabama; not everybody could go 120 miles to Auburn University. So some people had to go in their communities. If they had to travel over 20 or 30 or 40 miles, they simply would not get an education. And you were one of the people in Alabama who led the fight for community colleges. Thousands and literally millions of Alabamians owe that part of their education to your insight and your wisdom and your participation in that.

GLEN BROWDER, I will tell you a tribute, once a man asked me if I would recommend him for a job. I said that I would recommend him because he had coached my little boy in Little League and he had done a good job. You learn something about somebody when they coach your son in Little League baseball. You get a real insight into them. And I remember that when I came up here and GLEN BROWDER and I were going to serve together, I knew GLEN, as we had been in the State legislature together. You had been a constitutional officer in the State. I had been. But I knew you as capable. I knew you as articulate. I knew you as a good man. But Randy Dempsey, one of my law partners, he had been in your class. You taught him at Jacksonville State. And you had evidently been a mentor to him and you had encouraged him.

He shared with me what a fine teacher you were and how you really cared about your students and how your students really enjoyed your classes. You did a good job and you really cared about the students. GLEN, that has always impressed me, that someone who was there in your classroom had such a wonderful opinion of you.

Becky, your wife, people like Becky, people are impressed with Becky. There, again, both of you, you all have several similarities. One is that you are committed to your family. You are committed to your marriages. I commend you. You are a good example in that regard.

GLEN, you are going to leave a legacy to our gulf war veterans. That is something that I came about 25 minutes ago and I had not heard anybody mention. But I am not sure if you are not the first person to go over to the Pentagon and say, we have got people that have returned from the gulf war. They are sick.

Mr. CALLAHAN. Mr. Speaker, I hate to interrupt the gentleman from Birmingham, but we only have 4 minutes left and we have two more distinguished speakers.

Mr. BACHUS. I will simply say this, GLEN. That is a devastating illness. You have been at the forefront of that and you are to be commended on that. And all our gulf veterans and all of us who support the military owe you a debt of gratitude for that.

Mr. CALLAHAN. I certainly hate to interrupt the gentleman.

Mr. Speaker, I yield to the gentleman from Minnesota, Mr. VENTO.

Mr. VENTO. I thank the gentleman, Mr. CALLAHAN, for this special order and wanted to commend my friends and colleagues, Congressmen TOM BEVILL and GLEN BROWDER. I think that what we see epitomized in these two good national policymakers is the magic of what happens in Congress.

People are elected with many different talents and they assume responsibility here, and although they are not specialists in national security or specialists in the role, they grow into that role and do yeoman's service. That certainly is the case with our friend GLEN BROWDER, and TOM BEVILL has grown really to be a giant in the work he has done in trying to hold together programs like the Corps of Engineers.

Over 30 years we have seen that evolve from a far different role than what it has played before. It really shows up when you work with him on a different project, as we did with a park unit in his district. It was one of the easier jobs I have had chairing the committee because I did not have to ask anyone to help. TOM did all the work, and he had helped so many Members of Congress and had had such an impact that it was obviously with acclaim that that was enacted. TOM, it was a tough job for you but we commend you and Lou and GLEN and Becky, and we wish you well. I know in the case of GLEN it is just an interruption in terms of his public service. We look to see him back in action quite soon. Best wishes to you all. Thank you for your services for the country.

Mr. Speaker, let me congratulate TOM BEVILL and thank his colleague from Alabama for sponsoring this special order in TOM BEVILL's and GLEN BROWDER's honor. These are really two good Members who will be missed and reflect very positively upon the Congress, their good State of Alabama, and the Nation.

GLEN BROWDER a teacher, farmer, Alabama State legislator, and State official served in Congress for 8 years, and has made an impressive contribution in national security and congressional reform issues. GLEN sought election to the other body, and for the moment is sidelined from public service but I've every expectation that our friend GLEN BROWDER will be back in public service in the near future. My best to GLEN, Becky, and their family as they make a transition within public service.

TOM BEVILL for over 30 years has labored and contributed in his role of representing the people of Alabama in the U.S. House. His work on the Appropriations Committee has been very important, in the last years he has reformed and guided this program of projects based on merit not just legislative clout.

TOM has been my neighbor in the Rayburn Office Building these past 10 years. We've spent many days walking back and forth to the floor to vote, he has been a good counselor and friend. I was pleased to work with TOM on the Little River Canyon National Park Unit in the authorizing process as I led the Parks and Public Lands Subcommittee, one of the easier tasks I had because TOM really did the heavy lifting. He had more friends, both Democrats and Republicans, that were interested in helping which is a real tribute for TOM BEVILL. Naturally this became the first national park unit in Alabama, a legacy that will hopefully be in Alabama forever a testament to Congressman BEVILL.

My colleague, my friend, you have well earned your place in our affection and best wishes to you TOM, Lou and the family in the years ahead as you enjoy your free time from the duties of service in the Congress.

Mr. CALLAHAN. I yield to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank my friend, Cardinal CALLAHAN, for yielding.

Mr. CALLAHAN. You may approach.

Mr. HOYER. I have just a few minutes. Two decent Americans are leaving the service of the people's House at the end of this year. This House will be a lesser body for their departure. Alabama will have suffered a significant loss.

Each of us individually in this House will have lost good friends. GLEN BROWDER is a relative newcomer relative to Mr. BEVILL but then again, most of us are relative newcomers relative to Mr. BEVILL. GLEN BROWDER, as SPENCE BACHUS indicated, is someone who cares about people, who is a capable, able, regular guy that you would be proud to have as your dad or your brother or your uncle or as your Congressman. I have been honored to serve with him.

TOM BEVILL is a giant. TOM BEVILL helped America invest in its future. One of the first votes I cast was on the Tennessee-Tombigbee when I came here to Congress. It was a controversial vote. It was the right vote. TOM BEVILL stood and said if America is to grow, if we are to create jobs, if we are to have economic viability and be competitive in world markets, we need to invest in America.

TOM BEVILL is my friend and he is an historic figure in this body. Few Members who have ever served in this House will be able to look back on their record of making America better. That is TOM BEVILL's. God bless you, TOM.

Mr. CALLAHAN. Mr. Speaker, I yield to the gentleman from Alabama, Mr. HILLIARD.

Mr. HILLIARD. Mr. Speaker, I am very appreciative for the time to both of my friends, TOM BEVILL as well as GLEN BROWDER. I am very happy to have had the pleasure to serve with both of them. I have known GLEN BROWDER for about 20 years. We served together in the Alabama State Legislature, and it was indeed a pleasure to have had the opportunity to serve with him there as well as here.

But to my good friend TOM BEVILL, he has been a true Alabamian, he has been a true American. He has been true to the cause. He has been fantastic in what he has done for this country. I congratulate him for his length of service, and I thank you for giving me the opportunity of being here with you.

I will surely miss both TOM BEVILL and GLEN BROWDER. We have been lucky, and yes, blessed, to have had two such strong Congressmen as these men, they are able and true. First, I must mention my good friend, TOM BEVILL of Alabama's Fourth District. Mr. BEVILL, as chairman of the Appropriations' Energy and Water Development Subcommittee created the Tenn-Tomm Waterway which flows through the length of my district. Just last week, TOM helped me in my efforts to stop the flooding along Birmingham's Village Creek, an area which is not even close to Mr. BEVILL's district, but that is the kind of man he is, kind and caring, a real gentleman.

Also, Mr. Speaker, allow me to say how much I will also miss Alabama's GLEN BROWDER, of the Third District. GLEN, a former political science professor, as well as a member of the Alabama Legislature, brought a professionalism to the House and to the Armed Services Committee which is hard to beat.

We will miss both of you, Congressman BEVILL and Mr. BROWDER.

Mr. CALLAHAN. Mr. Speaker, in closing, let me thank the Speaker for his patience. I recognize our time has expired. The gentleman from Louisiana, I think, is next going to be recognized and he has indicated since so many Members want to pay homage to TOM that he may yield some time to them. But this is not a eulogy. This is just an appreciation ceremony to two great Americans.

Mr. STOKES. Mr. Speaker, I want to thank my colleague, the distinguished gentleman from Alabama, SONNY CALLAHAN, for reserving this special order. We gather today to pay tribute to retiring members of the Alabama congressional delegation. I am honored to join my colleagues in saluting Congressman GLEN BROWDER, who represents the Third Congressional District of Alabama.

GLEN BOWDER was elected to the U.S. Congress in a special election in 1989. Prior to his election, GLEN served in the Alabama State House of Representatives from 1982 to 1986. In 1986, GLEN BROWDER won election as Alabama's Secretary of State, and served with distinction in that capacity. Thus, he came to this legislative body armed with strong political skills and a commitment to public service. During his 7-year tenure in the Congress, the Nation has benefited as a result of his leadership on important issues.

Mr. Speaker, GLEN BROWDER has served with distinction on the National Security Committee where he is a member of the Subcommittee on Military Installations and Facilities, and Military Readiness. In addition, he is the ranking minority member of the Subcommittee on Morale, Welfare and Recreation. GLEN has also served with distinction as a member of the House Budget Committee.

During his career in the House, we recall GLEN BROWDER's efforts to serve his constituents by keeping Fort McClellan Army Base operational. He has pushed the Defense Department to be more forthcoming on the use of chemical weapons during the Persian Gulf war. GLEN BROWDER has also gained respect for spearheading efforts to reform our Nation's campaign finance regulations. His hard work has earned him the respect and admiration of his colleagues and others across the Nation.

Mr. Speaker, as he departs this legislative Chamber, we pause to pay tribute to GLEN BROWDER. He is a skilled legislator whose voice will be missed in the Halls of Congress. We also extend our good wishes to his wife, Becky, and members of the Browder family. GLEN is a good friend who will always be remembered.

Mr. RICHARDSON. Mr. Speaker, I rise today to join my colleagues in acknowledging one of the finest Members of the House of Representatives, TOM BEVILL.

As a Member of this House since 1966, TOM has been a respected and intellectual leader. His work as chairman of the Subcommittee on Energy and Water Appropriations has produced the Nation's major energy research programs and America's water resource projects. TOM has also been a true advocate for senior citizens by working hard in defense of Social Security.

I want to specifically mention that TOM always found time amidst his extremely busy schedule to consider the concerns of other Members. I remember a time when TOM came to my home State of New Mexico to study the irrigation needs of the Hispanic communities in my district. Because of TOM's assistance and support, many of New Mexico's centuries old irrigation ditches, so-called acequias, have received critical congressional funding for needed repair and restoration. Not only did TOM devote his energy and skill to his constituents, but he also found time to care about mine.

TOM added dignity to this House by working in the spirit of bipartisanship, and he will definitely be missed. Good luck, TOM and thank you for all you have done for this great institution.

Mr. RAHALL. Mr. Speaker, I feel particularly privileged to be able to say farewell to Representatives TOM BEVILL and GLEN BROWDER of Alabama as friends as well as beloved colleagues in the House. I have learned much from them, and I appreciate their having allowed me to grow as a Member by drawing from the wealth of their experience and their knowledge.

TOM BEVILL was elected a full 10 years ahead of my election to the House, in 1966, and he has been reelected by overwhelming margins ever since by the folks he represents in Alabama's Fourth Congressional District.

As chairman of the Energy and Water Appropriations Subcommittee, TOM has stood with me many, many times on behalf of the people I serve in southern West Virginia as we worked together to facilitate development of West Virginia's waterways and energy development projects. My constituents have benefited greatly through TOM's willingness to listen and to understand and to respond to the needs of my congressional district with respect to water resources development and Corps of Engineers projects throughout southern West Virginia.

TOM BEVILL's mastery of the appropriations process is legendary. The people of the Fourth Congressional District of Alabama are indeed fortunate to have had such a champion fighting for their needs all these years, and he will be long remembered by all of us who remain behind here in this body as the man who helped each of us better serve our own constituents. He is a man who believed that every dollar he ever appropriated was spent on a worthy cause—to help someone down on his luck, to help a community grow, to help a university educate its young people, to ensure that a small child had enough to eat. And he believed that money for these purposes needed to be spent in Alabama, and in West Virginia, and in every State in the Union.

TOM BEVILL has served with distinction, pride, integrity and style. He will be sorely missed in the years to come by this House of Representatives.

GLEN BROWDER, elected in 1989, has served with distinction on the National Security Committee, formerly the Armed Services Committee, where he has labored to fulfill a responsibility to assure that our Nation's military readiness is second to none in the world.

While many of us in the House never served on committees with jurisdiction over out national security, I knew, and my colleagues knew, that we could rely upon GLEN's knowledge and expertise in the area of national defense in keeping us strong as a nation and ready to defend our country, its people, and our allies abroad. We knew that GLEN's thoroughness and his vast knowledge about our armed services and military readiness, would lead to a reasonable and responsible use of our vast military resources where they would do the most good.

GLEN also served his constituents in the Third Congressional District of Alabama, not only by making wise decisions of our Nation's security, but by taking great care to see to the domestic needs of the people in Alabama's Third Congressional District. He combined his natural leadership skills with his innate sensitivity to their socioeconomic circumstances in order to improve the lives of his people.

Above all, both TOM and GLEN deeply believed in good Government throughout their tenures in the House, and their years of service and commitment to good government is visible across this great country. I commend them for their diligent service to Alabama and to the United States.

I wish them both Godspeed.

Mr. STOKES. Mr. Speaker, I want to thank my colleague, the distinguished gentleman from Alabama, SONNY CALLAHAN, for reserving this special order. We gather today to pay tribute to retiring members of the Alabama congressional delegation. I am honored to join my colleagues in paying special tribute to TOM BEVILL, who will depart the U.S. Congress at the end of this legislative session.

TOM BEVILL was first elected to the U.S. Congress on November 8, 1966. His retirement brings to a close a 30-year career in public service. I share the sentiments of many others who state that TOM is one of the most respected and effective Members to have served in this legislative body.

Mr. Speaker, TOM BEVILL is a senior member of the House Appropriations Committee and the former chairman of its Subcommittee on Energy and Water Development. He is also a member of the Appropriations Subcommittee on the Interior. Through these assignments, TOM BEVILL has been instrumental in funding the Nation's major energy research programs and our Nation's water resource development projects.

The Fourth Congressional District of Alabama has benefited as a result of TOM BEVILL's commitment and hard work. I recall working closely with TOM BEVILL on the Tennessee-Tombigbee Waterway project. It was an important initiative that could not have gone forward without his strong leadership. During his tenure in Congress, TOM has also demonstrated a steadfast commitment to education. A leading defender of Social Security and Medicare, as well as a a strong advocate for health care, TOM has earned the support of our Nation's seniors.

Mr. Speaker, I have been privileged to serve in the Congress with TOM BEVILL. He is a skilled lawmaker and a dedicated public servant. He is also a gentleman and a close personal friend. Throughout our Appropriations Committee and floor deliberations, he as been the voice of reason and compassion. Members on both sides of the aisle will agree that over the years, TOM BEVILL has taught us valuable lessons about working together and public service. I am proud to share a very special relationship with TOM BEVILL. He is someone whom I greatly admire and respect.

Mr. Speaker, as he departs this legislative Chamber, I join my colleagues in saluting TOM BEVILL for a job well done. I also extend my best wishes to his charming wife, Lou, and members of the Bevill family. TOM BEVILL will be missed in the Halls of Congress. We take pride in knowing, however, that he leaves behind a record of legislative achievement and service that will stand in the years to come.

AFFIRMATIVE ACTION

The SPEAKER pro tempore (Mr. QUINN). Under the Speaker's announced policy of May 12, 1995, the gentleman from Illinois [Mr. JACKSON] is recognized for 60 minutes.

CONTINUED TRIBUTE TO TOM BEVILL AND GLEN BROWDER

Mr. JACKSON of Illinois. Mr. Speaker, with that I yield to the distinguished ranking member, the gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Speaker, I thank the gentleman from Illinois for yielding to me. I will just take a couple of moments of his time. I am sorry that I did not arrive earlier to be able to speak on Mr. CALLAHAN's special order on behalf of TOM BEVILL and GLEN BROWDER. Mr. OBEY and I have been in a House-Senate conference on the VA-HUD bill, and we just got a chance to get here to the floor.

I will just take a moment, but I do want to say that with reference to TOM BEVILL, with whom I have served almost all the time that I have been in the Congress, that I have established a lot of friendships in this Congress but no greater friendship have I had than that I have had with TOM BEVILL. I do not know of any Member of Congress who is respected any more highly than he is, nor do I know of anyone who has made a greater contribution to this Nation than he has.

We have worked on a lot of projects together over the years and it has been a real privilege and honor to serve with him, to get to know not only him but members of his family, his lovely wife and members of his family. I want to say we are going to miss TOM here.

□ 1645

His level of leadership has been something that we can all point to as a model and with great admiration.

In the same vein, I want to take just a second to say what a pleasure and privilege it has been to serve with GLEN BROWDER. He too, following in the footsteps of TOM BEVILL and other leaders from Alabama, has been a real model here. He has had a long and distinguished record legislatively and is someone whom all of us not only admire, but we will miss greatly when he leaves this body.

And just lastly, TOM, I might say that I am sure that our good friend, Bob Jones, is watching this special order this afternoon and I am sure there is a smile on his face with the knowledge that you and I shared a special friendship over the years.

Mr. JACKSON of Illinois. I thank you, Mr. STOKES.

Mr. Speaker, I yield to the distinguished ranking member of the Committee on Appropriations, Mr. OBEY.

Mr. OBEY. I thank the gentleman. I do not want to impose on his time. I would simply ask unanimous consent that the remarks I made about our good friend, TOM BEVILL, when we considered the energy and water appropriations bill be incorporated in my remarks at this point in the RECORD and to simply say again, TOM, how much I have enjoyed the opportunity to serve with you and how grateful we are for the service you have given the country.

And I want to say to GLEN that you have, I think, performed tremendous service in this institution with good humor and with grace, with understanding of other people's points of view and with deep commitment to the things that you believe in. That is what makes this country strong, and that is what makes this institution what it is supposed to be, and I thank you both for your service here.

Mr. JACKSON of Illinois. Mr. Speaker, I certainly want to take this opportunity to thank TOM BEVILL and GLEN BROWDER, as well, for their years of service to this institution, and while I have not had the privilege of knowing and working with them at the level that I wish I could have, their reputations in this institution as genuine public servants certainly precedes them and I am just honored to have the privilege to be from the State of Illinois, to follow in their tradition of public service. The roles that they have represented in this institution are not without great distinction and without the kind of merit that truly needs to be bestowed upon public servants in this institution.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. FIELDS of Louisiana (at the request of Mr. GEPHARDT), for today, on account of family illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. VOLKMER) to revise and extend their remarks and include extraneous material:)

Mr. WISE, for 5 minutes, today.

Mr. VOLKMER, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

(The following Members (at the request of Mr. HASTERT) to revise and extend their remarks and include extraneous material:)

Mrs. MORELLA, for 5 minutes on September 25.

Mr. CHRISTENSEN, for 5 minutes, today.
Mr. BUYER, for 5 minutes, today.
Mr. MICA, for 5 minutes, today.
Mr. SCARBOROUGH, for 5 minutes, today.
Mr. TALENT, for 5 minutes, today.
Mr. HANSEN, for 5 minutes, today.
Mr. SMITH of Michigan, for 5 minutes, today.
Mr. KASICH, for 5 minutes, today.
Mr. GOSS, for 5 minutes on September 24.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

The following Members (at the request of Mr. VOLKMER) and to include extraneous material:
Ms. PELOSI.
Mr. LANTOS.
Mr. LEVIN.
Mr. MILLER of California.
Ms. DELAURO.
Mr. MOAKLEY.
Mr. MENENDEZ.
Mr. KLECZKA.
Mr. REED.
Mr. TORRICELLI.

(The following Members (at the request of Mr. HASTERT) and to include extraneous material:)
Mr. ROTH.
Mr. BURTON of Indiana.
Mr. SKEEN.
Mr. QUINN.
Mr. WOLF.
Mr. BROWNBACK.
Mr. SMITH of New Jersey in two instances.
Mr. FIELDS of Texas.
Mr. FORBES in two instances.
Mr. SENSENBRENNER in two instances.
Mrs. MEYERS of Kansas.

(The following Members (at the request of Mr. BROWN of Ohio) and to include extraneous material:)
Mr. SHAW.
Mr. LEVIN.
Mr. BECERRA.
Mr. BARCIA in two instances.
Mr. MANTON.
Mr. GOODLING in two instances.
Ms. HARMAN.
Mr. STUMP.
Mr. LEWIS of Kentucky.
Mr. WELDON of Florida.
Mr. RAMSTAD.
Mr. TORRES in two instances.
Mr. STUPAK.
Mr. PICKETT.
Mr. FAZIO of California.
Mr. PAYNE of Virginia.
Mr. HOKE.
Mr. MCINTOSH.
Mr. SMITH of Michigan.
Ms. BROWN of Florida.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 982. An act to protect the national information infrastructure, and for other purposes.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2679. An act to revise the boundry of the North Platte National Wildlife Refuge, to expand the Pettaquamscutt Cove National Wildlife Refuge, and for other purposes;

H.R. 3060. An act to implement the Protocol on Environmental Protection to the Antarctic Treaty;

H.R. 3396. An act to define and protect the institution of marriage;

H.R. 3553. An act to amend the Federal Trade Commission Act to authorize appropriations for the Federal Trade Commission; and

H.R. 3816. An act making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 533. To clarify the rules governing removal of cases to Federal court, and for other purposes; and

S. 677. To repeal a redundant venue provision, and for other purposes.

BILL PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

On September 19, 1996:

H.R. 2428. An act to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

ADJOURNMENT

Mr. BROWN of Ohio. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 24 minutes p.m.), the House adjourned until tomorrow, Friday, September 20, 1996, at 9 a.m.

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

U.S. CONGRESS,
OFFICE OF COMPLIANCE
Washington, DC, September 18, 1996.

Hon. NEWT GINGRICH,
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. section 1383(b), I am transmitting a Notice of Adoption of Amendments to the Procedural Rules, together with a copy of the adopted amendments to the procedural rules. The Congressional Accountability act specifies that the Notice and the amendments to the rules be published in the Congressional Record on the first day on which both Houses of Congress are in session following this transmittal.

Sincerely,

RICKY SILBERMAN,
Executive Director.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: AMENDMENTS TO PROCEDURAL RULES

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

Summary: After considering comments to the Notice of Proposed Rulemaking published July 11, 1996 in the Congressional Record, the Executive Director has adopted and is publishing amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act of 1995 (P.L. 104-1, 109 Stat. 3). The amendments to the procedural rules have been approved by the Board of Directors, Office of Compliance.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999. Telephone No. 202–724–9250.

SUPPLEMENTARY INFORMATION:

I. Background

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 303 of the CAA directs that the Executive Director of the Office of Compliance (''Office'') shall, subject to the approval of the Board of Directors (''Board'') of the Office, adopt rules governing the procedures for the Office, and may amend those rules in the same manner. The procedural rules currently in effect, approved by the Board and adopted by the Executive Director, were published December 22, 1995 in the Congressional Record (141 Cong. R. S 19239 (daily ed., Dec. 22, 1995)). The revisions and additions that follow amend certain of the existing procedures by which the Office provides for the consideration and resolution of alleged violations of the laws made applicable under Part A of title II of the CAA, and establish procedures for consideration of matters arising under Part D of title II of the CAA, which is generally effective October 1, 1996.

Pursuant to section 303(b) of the CAA, the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on July 11, 1996 (142 Cong. R. S7685-88, H7450-54 (daily ed., July 11, 1996))

inviting comments regarding the proposed amendments to the procedural rules. Three comments were received in response to the NPR: two from Congressional offices and one from a labor organization. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these amendments to the procedural rules.

II. Consideration of Comments and Conclusions

A. Definition of participant

One commenter suggested deleting the terms ''labor organization'' and ''employing office'' from the definition of ''participant'' found at section 1.07(c) of the proposed rules. The commenter noted that a ''party'' is included in the definition of participant and the term ''party'' is defined in section 1.02(i) of the rules as including a labor organization or employing office.

The final rule, as adopted and approved, incorporates the modification suggested by the commenter.

B. Contents or records of confidential proceedings

One commenter asked that section 1.07(d) of the rules be revised to reflect the commenter s understanding that ''an employing office may acknowledge the existence of a complaint and the general allegations being made by an employee, and the employing office may deny the allegations.'' This commenter further requested that the phrase ''information forming the basis for the allegation,'' found in the same section of the rules, be defined. According to the commenter, the phrase is ambiguous. The commenter did not, however, identify the asserted ambiguity.

The statute requires that the filing of a complaint and its subject matter be kept confidential. Thus, it is not permissible under the statute, as enacted—much less the procedural rules implementing the statute—for an employing office to disclose the information described. Moreover, no ambiguity has been identified or is apparent which would warrant modifying the proposed rule. Accordingly, the rule has been adopted and approved without modification.

C. Requests for extension of the mediation period

Two commenters correctly point out that, although it was noted in the preamble of the NPR that section 2.04(e)(2) is proposed to be modified to allow oral as well as written requests for the extension of the mediation period, the actual text of the proposed revision was inadvertently omitted. Although neither commenter stated an objection to the substance of the proposed revision, one commenter requested that the text of the proposed amendment be published and the comment period be extended prior to its adoption.

The proposed amendment, and its intent, were clearly explained in the NPR so as to give sufficient notice of the proposed modification. And as the adoption of the amended rule will not work a disservice to any party to a mediation, but rather will enable all parties to more fully utilize the mediation process, the proposed modification to the rule has been adopted and approved.

D. Answer to complaint

All three commenters expressed concern that proposed section 5.01(f) could be interpreted to foreclose a respondent from raising certain affirmative defenses or interposing certain denials. One commenter further urged the adoption of a specific rule that would allow the filing of a motion to dismiss or a motion for a more definitive statement in lieu of an answer.

With respect to the request that the Executive Director adopt a rule allowing for the filing of the specific motions suggested, it is noted that, although not specifically provided for, such matters are already permitted under the existing procedural rules. Thus, no modification is necessary.

As to the commenters' other concerns, the language of section 5.01(f), as adopted and approved, has been clarified to provide that only affirmative defenses that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived if not raised in an answer. In addition, the rule has been modified to describe the circumstances under which motions for leave to amend an answer to raise defenses or interpose denials will be granted.

E. Withdrawal of complaints

One commenter argued that the requirement contained in section 5.03 that the withdrawal of a complaint be approved by a Hearing Officer should be deleted because, according to the commenter, under the CAA a complaint may be withdrawn at any time. In the commenter's view, a rule requiring Hearing Officer approval of such a withdrawal is ''an inappropriate exercise of the Executive Director's authority.'' This commenter further took issue with the distinction made in the rule between approval of the withdrawal of a complaint by a covered employee, which must always be approved by a Hearing Officer, and the withdrawal of a complaint by the General Counsel, which may occur without Hearing Officer approval prior to the opening of a hearing.

Contrary to the commenter's assertion, it is entirely appropriate and, indeed, the norm in our legal system to require approval of the withdrawal of an action after formal proceedings have been initiated. *See, e.g.,* Federal Rule of Civil Procedure 41. Moreover, the different restrictions placed on covered employees and the General Counsel are also appropriate. Under section 220 of the CAA, and the regulations adopted by the Board pursuant to section 220(d) to implement section 220, the General Counsel's prosecutorial discretion has been properly acknowledged by permitting the General Counsel to withdraw a complaint without Hearing Officer approval prior to the opening of the hearing. Accordingly, the final rule, as adopted and approved, has not been modified.

F. Objections not made are deemed waived

Two commenters expressed the concern that proposed section 7.01(e) could operate to work a disservice to unrepresented parties or to preclude Board consideration of appropriate matters on appeal.

The rule, as adopted and approved, has been modified. Further, it is noted that a Hearing Officer is always free to consider issues about which objections were not made.

G. Reconsideration

One commenter asked that proposed section 8.02 be clarified to advise parties concerning how the filing of a motion for reconsideration of a Board decision affects the requirements for filing an appeal of that decision.

The final rule makes clear that the filing of a motion for reconsideration does not relieve a party of the obligation to file a timely appeal.

H. Judicial review

One commenter asserted that section 8.04 should be deleted either as superfluous because it merely reiterates parts of section 407 of the CAA or as confusing because it does not incorporate all of section 407.

Section 8.04 incorporates the provisions of section 407 that are applicable to the provisions of the CAA that are currently in effect. As section 8.04 is neither superfluous nor confusing, the proposed rule has been adopted and approved unmodified.

I. Signing of Pleadings, motions and other filings; violation of rules; sanctions

One commenter recommended that ''the Board further elaborate'' on proposed section 9.02 and that there be an extension of time to comment ''after the Board provides further explanation.'' In the event the commenter's recommendation was not accepted, the commenter proposed adding the requirement that a pleading must be warranted by a ''non-frivolous'' argument. Another commenter objected to the possible sanction of attorney s fees, arguing that it could have a chilling effect on individual complainants.

Section 9.02 of the rules is virtually identical to Rule 11 of the Federal Rules of Civil Procedure. Rule 11 has a rich history and tradition and is an essential procedural part of any sound dispute resolution scheme. Therefore, further explanation or modification is unnecessary and, the rule, as adopted and approved, is the same as that proposed.

J. Ex parte communications

Two commenters asked for a definition of the term ''interested person'' as used in proposed section 9.04. One of these commenters argued that, as drafted, the proposed rule appeared to be so broad as to restrict access to the Office of Compliance personnel, including the Executive Director and Deputy Executive Directors. The same two commenters also urged the deletion of proposed section 9.04(e)(2), which provides that censure or the suspension or revocation of the privilege of practice before the Office is a possible sanction for engaging in prohibited communications. Both commenters considered such sanctions to be too harsh and questioned the authority of the Board to impose such sanctions. The third commenter urged that section 9.04(c)(3)(iii) be modified to disallow communications on matters of general significance because, according to the commenter, such communications could have an impact on specific pending matters. This commenter also expressed concern about the imposition of sanctions on unrepresented complainants who might inadvertently violate the prohibitions on ex parte communications.

In response to the commenters' concerns, the Executive Director is modifying section 9.04(a)(1) to define ''interested person'' for the purposes of the rule. But, contrary to one commenter's understanding, the rule only prohibits interested persons from engaging in prohibited communications with Hearing Officers and Board members; nothing in the proposed or adopted rule prohibits contact with Office of Compliance personnel, including the Office's statutory appointees. Indeed, interaction between Office personnel and employing offices, covered employees, labor organizations and their agents, as well as other interested individuals or organizations, is encouraged.

With respect to proposed section 9.04(e)(2), the sanctions of censure or suspension or revocation of the privilege of practice before the Board, although substantial, may properly be imposed in certain circumstances. However, as they are available to the Board under section 9.04(e)(1), proposed section 9.04(e)(2) has been omitted from the final rule. In addition, to further address concerns, language has been added to section 9.04(e)(1) to confirm that sanctions shall be commensurate with the nature of the offense.

K. Informal resolutions and settlement agreements

One commenter offered specific suggested revisions to proposed section 9.05(a). The commenter believed that these revisions are necessary to make it clear that section 9.05 applies only after a covered employee has initiated counseling.

The proposed rule, by its terms, applies only in instances where a covered employee has filed a formal request for counseling. Moreover, in the NPR, it was specifically noted that the rule is being amended to make it clear that section 9.05 of the rules applies only where covered employees have initiated proceedings under the CAA. Accordingly, the proposed rule has been adopted and approved without modification.

L. Additional comments

Two of the commenters also offered several comments and suggestions on existing procedural rules and other matters that were not the subject of or germane to the proposals in the NPR. For example, the commenters suggested: (1) changes in the special procedures for the Architect of the Capitol and Capitol Police; (2) a rule allowing parties to negotiate changes to the Agreement to Mediate; (3) a procedure by which the parties, instead of the Executive Director, would select Hearing Officers; (4) procedures by which the Office would notify employing offices of various matters; (5) additional requirements for the filing of a complaint; (6) changes in counseling procedures; and (7) a procedure which would allow parties to petition for the recusal of individual Board members.

As there was no notice given to the public or interested persons that such amendments to the procedural rules were being considered, it would be inappropriate to amend the rules in the manner requested by the commenters. However, the Office will consider the comments as part of its ongoing review of its operations and, to the extent appropriate, may issue another notice of proposed rulemaking at an appropriate time to address some or all of these comments.

Signed at Washington, D.C., on this 18th day of September, 1996.

R. GAULL SILBERMAN,
Executive Director,
Office of Compliance.

Adopted Amendment to the Procedural Rules

A. Comparison table

The rules have been reorganized and re-ordered; as a result, some sections have been moved and/or renumbered. Cross-references in appropriate sections of the procedural rules have been modified accordingly. The organizational changes are listed in the following comparison table.

Former Section No.	*New Section No.*
§2.06 Complaints	§5.01
§2.07 Appointment of the Hearing Officer	§5.02
§2.08 Filing, Service and Size Limitations of Motions, Briefs, Responses and Other Documents	§9.01
§2.09 Dismissal of Complaint	§5.03
§2.10 Confidentiality	§5.04
§2.11 Filing of Civil Action	§2.06
§8.02 Compliance with Final Decisions, Requests for Enforcement	§8.03
§8.03 Judicial Review	§8.04
§9.01 Attorney's Fees and Costs	§9.03
§9.02 Ex Parte Communications	§9.04
§9.03 Settlement Agreements	§9.05
§9.04 Revocation, Amendment or Waiver of Rules	§9.06

B. Text of Amendments to Procedural Rules

§1.01 Scope and policy

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Parts A and D of title II of the Congressional Accountability Act of 1995. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§1.02(c)

Employee. The term employee includes an applicant for employment and a former employee, except as provided in section 2421.3(b) of the Board s rules under section 220 of the Act.

§1.02(i)

Party. The term party means: (1) the employee or the employing office in a proceeding under Part A of title II of the Act; or (2) the labor organization, individual employing office or employing activity, or, as appropriate, the General Counsel in a proceeding under Part D of title II of the Act.

§1.02(j)

Respondent. The term ''respondent'' means the party against which a complaint is filed.

§1.05 Designation of Representative.

(a) An employee, a witness, a labor organization, or an employing office wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney.

(b) *Service where there is a representative.* All service of documents shall be directed to the representative, unless the represented individual, labor organization, or employing office specifies otherwise and until such time as that individual, labor organization, or employing office notifies the Executive Director of an amendment or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials by the represented individual or entity shall be computed in the same manner as for unrepresented individuals or entities with service of the documents, however, directed to the representative, as provided.

§1.07(b)

Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 416 of the CAA (''confidential proceedings'') may disclose the contents or records of those proceedings to any person or entity. Nothing in these rules prohibits a bona fide representative of a party under section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party. Moreover, nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings for the limited purposes of investigating claims, ensuring compliance with the Act or preparing its prosecution or defense, to the extent that such disclosure is reasonably necessary to accomplish the aforementioned purposes and provided that the party making the disclosure takes all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information.

§1.07(c)

Participant. For the purposes of this rule, participant means any individual or party, including a designated representative, that becomes a participant in counseling under section 402, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

§1.07(d)

Contents or records of confidential proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. A participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, an employing office or its representatives may disclose information about its employment practices and personnel actions, provided that the information was not obtained in a confidential proceeding. However, an employee who obtains that information in mediation or other confidential proceeding may not disclose such information. Similarly, information forming the basis for the allegation of a complaining employee may be disclosed by that employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or its representatives may not disclose that information if it was obtained in a confidential proceeding.

§2.04(a)

(a) *Explanation.* Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a neutral trained to assist them in resolving disputes. As parties to the mediation, employees, employing offices and their representatives discuss alternatives to continuing their dispute, including the possibility of reaching a voluntary, mutually satisfactory resolution. The neutral has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to section 416 of the Act.

§2.04(e)

(e) *Duration and Extension.* (1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint request of the parties. The request may be oral or written and shall be noted and filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

§2.04(f)(2)

(2) *The Agreement to Mediate.* At the commencement of the mediation, the neutral will ask the parties to sign an agreement prepared by the Office (''the Agreement to Mediate''). The Agreement to Mediate will set out the conditions under which mediation will occur, including the requirement that the participants adhere to the confidentiality of the process. The Agreement to Mediate will also provide that the parties to the

mediation will not seek to have the counselor or the neutral participate, testify or otherwise present evidence in any subsequent civil action under section 408 of the Act or any other proceeding.

§2.04(h)

Informal Resolutions and Settlement Agreements. At any time during mediation the parties may resolve or settle a dispute in accordance with section 9.05 of these rules.

§5.01 Complaints

(a) *Who may file.* (1) An employee who has completed mediation under section 2.04 may timely file a complaint with the Office alleging any violation of sections 201 through 207 of the Act.

(2) The General Counsel may file a complaint alleging a violation of section 220 of the Act.

(b) *When to file.* (1) A complaint may be filed by an employee no sooner than 30 days after the date of receipt of the notice under section 2.04(i), but no later than 90 days after receipt of that notice.

(2) A complaint may be filed by the General Counsel after the investigation of a charge filed under section 220 of the Act.

(c) *Form and Contents.* (1) Complaints filed by covered employees. A complaint shall be written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(i) the name, mailing address, and telephone number(s) of the complainant;

(ii) the name, address and telephone number of the employing office against which the complaint is brought;

(iii) the name(s) and title(s) of the individual(s) involved in the conduct that the employee claims is a violation of the Act;

(iv) a description of the conduct being challenged, including the date(s) of the conduct;

(v) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the section(s) of the Act involved;

(vi) a statement of the relief or remedy sought; and

(vii) the name, address, and telephone number of the representative, if any, who will act on behalf of the complainant.

(2) Complaints filed by the General Counsel. A complaint filed by the General Counsel shall be typed, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, address and telephone number of the employing office and/or labor organization alleged to have violated section 220 against which the complaint is brought;

(ii) notice of the charge filed alleging a violation of section 220;

(iii) a description of the acts and conduct that are alleged to be violations of the Act, including all relevant dates and places and the names and titles of the responsible individuals; and

(iv) a statement of the relief or remedy sought.

(d) *Amendments.* Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments, as appropriate, relate to the violations for which the employee has completed counseling and mediation, or relate to the charge(s) investigated by the General Counsel; and that permitting such amendments will not unduly prejudice the rights of the employing office, the labor organization, or other parties, unduly delay the completion of the hearing or otherwise interfere with or impede the proceedings.

(e) *Service of Complaint.* Upon receipt of a complaint or an amended complaint, the Office shall serve the respondent, or its designated representative, by hand delivery or certified mail, with a copy of the complaint or amended complaint and a copy of these rules. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) *Answer.* Within 15 days after receipt of a copy of a complaint or an amended complaint, the respondent shall file an answer with the Office and serve one copy on the complainant. The answer shall contain a statement of the position of the respondent on each of the issues raised in the complaint or amended complaint, including admissions, denials, or explanations of each allegation made in the complaint and any affirmative defenses or other defenses to the complaint.

Failure to file an answer or to raise a claim or defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived. A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§5.03 Dismissal of complaints

(a) A Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted, including, but not limited to, claims that were not advanced in counseling or mediation.

(b) A Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under the Act or these rules.

(c) If the General Counsel or any complainant fails to proceed with an action, the Hearing Officer may dismiss the complaint with prejudice.

(d) *Appeal.* A dismissal by the Hearing Officer made under section 5.03(a)-(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01.

(e) *Withdrawal of Complaint by Complainant.* At any time a complainant may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Hearing Officer.

(f) *Withdrawal of Complaint by the General Counsel.* At any time prior to the opening of the hearing the General Counsel may withdraw his complaint by filing a notice with the Executive Director and the Hearing Officer and by serving a copy on the respondent. After opening of the hearing, any such withdrawal must be approved by the Hearing Officer.

§7.04(b)

Scheduling of the Prehearing Conference. Within 7 days after assignment, the Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

§7.07(e)

(e) Any evidentiary objection not timely made before a Hearing Officer shall, in the absence of clear error, be deemed waived on appeal to the Board.

§7.07(f)

(f) If the Hearing Officer concludes that a representative of an employee, a witness, a labor organization, or an employing office has a conflict of interest, he or she may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party will have a reasonable time to retain other representation.

§8.01(i)

The Board may invite amicus participation, in appropriate circumstances, in a manner consistent with the requirements of section 416 of the CAA.

§8.02 Reconsideration

After a final decision or order of the Board has been issued, a party to the proceeding before the Board, who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. The motion shall be filed within 15 days after service of the Board's decision or order. No response shall be filed unless the Board so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the action of the Board unless so ordered by the Board.

§8.04 Judicial review

Pursuant to section 407 of the Act,

(a) the United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of:

(1) a party aggrieved by a final decision of the Board under section 406(e) in cases arising under part A of title II, or

(2) the General Counsel or a respondent before the Board who files a petition under section 220(c)(3) of the Act.

(b) The U.S. Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 405(g) or 406(e) with respect to a violation of part A or D of title II of the Act.

(c) The party filing a petition for review shall serve a copy on the opposing party or parties or their representative(s).

§9.02 Signing of pleadings, motions and other filings; violation of rules; sanctions

Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other filing, including a reasonable attorney's fee. A

Hearing Officer or the Board, as appropriate, upon motion or its own initiative may also impose an appropriate sanction, which may include the sanctions specified in section 7.02, for any other violation of these rules that does not result from reasonable error.

§ 9.04 Ex parte communications.

(a) *Definitions.* (1) The term *interested person outside the Office* means any covered employee and agent thereof who is not an employee or agent of the Office, any labor organization and agent thereof, any employing office and agent thereof, and any individual or organization and agent thereof, who is or may reasonably be expected to be involved in a proceeding or a rulemaking, and the General Counsel and any agent thereof when prosecuting a complaint proceeding before the Office pursuant to sections 210, 215, or 220 of the CAA. The term also includes any employee of the Office who becomes a party or a witness for a party other than the Office in proceedings as defined in these rules.

(2) The term *ex parte communication* means an oral or written communication (a) that is between an interested person outside the Office and a Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking; (b) that is related to a proceeding or a rulemaking; (c) that is not made on the public record; (d) that is not made in the presence of all parties to a proceeding or a rulemaking; and (5) that is made without reasonable prior notice to all parties to a proceeding or a rulemaking.

(3) For purposes of section 9.04, the term *proceeding* means the complaint and hearing proceeding under section 405 of the CAA, an appeal to the Board under section 406 of the CAA, a pre-election investigatory hearing under section 220 of the CAA, and any other proceeding of the Office established pursuant to regulations issued by the Board under the CAA.

(4) The term *period of rulemaking* means the period commencing with the issuance of an advance notice of proposed rulemaking or of a notice of proposed rulemaking, whichever issues first, and concluding with the issuance of a final rule.

(b) *Exception to Coverage.* The rules set forth in this section do not apply during periods that the Board designates as periods of negotiated rulemaking.

(c) *Prohibited Ex Parte Communications and Exceptions.* (1) During a proceeding, it is prohibited knowingly to make or cause to be made:

(i) a written ex parte communication if copies thereof are not promptly served by the communicator on all parties to the proceeding in accordance with section 9.01 of these Rules; or

(ii) an oral ex parte communication unless all parties have received advance notice thereof by the communicator and have an adequate opportunity to be present.

(2) During the period of rulemaking, it is prohibited knowingly to make or cause to be made a written or an oral ex parte communication. During the period of rulemaking, the Office shall treat any written ex parte communication as a comment in response to the advance notice of proposed rulemaking or the notice of proposed rulemaking, whichever is pending, and such communications will therefore be part of the public rulemaking record.

(3) Notwithstanding the prohibitions set forth in (1) and (2), the following ex parte communications are not prohibited:

(i) those which relate solely to matters which the Board member or Hearing Officer is authorized by law, Office rules, or order of the Board or Hearing Officer to entertain or dispose of on an ex parte basis;

(ii) those which all parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(iii) those which concern only matters of general significance to the field of labor and employment law or administrative practice;

(iv) those from the General Counsel to the Office or the Board when the General Counsel is acting on behalf of the Office or the Board under any section of the CAA; and

(v) those which could not reasonably be construed to create either unfairness or the appearance of unfairness in a proceeding or rulemaking.

(4) It is prohibited knowingly to solicit or cause to be solicited any prohibited ex parte communication.

(d) *Reporting of Prohibited Ex Parte Communications.* (1) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who determines that he or she is being asked to receive a prohibited ex parte communication shall refuse to do so and inform the communicator of this rule.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding who knowingly receives a prohibited ex parte communication shall (a) notify the parties to the proceeding that such a communication has been received; and (b) provide the parties with a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). If a proceeding is then pending before either the Board or a Hearing Officer, and if the Board or Hearing Officer so orders, these materials shall then be placed in the record of the proceeding. Upon order of the Hearing Officer or the Board, the parties may be provided with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(3) Any Board member involved in a rulemaking who knowingly receives a prohibited ex parte communication shall cause to be published in the Congressional Record a notice that such a communication has been received and a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). Upon order of the Board, these materials shall then be placed in the record of the rulemaking and the Board shall provide interested persons with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(4) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly receives a prohibited ex parte communication and who fails to comply with the requirements of subsections (1), (2), or (3) above, is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

(e) *Penalties and Enforcement.* (1) Where a person is alleged to have made or caused another to make a prohibited ex parte communication, the Board or the Hearing Officer (as appropriate) may issue to the person a notice to show cause, returnable within a stated period not less than seven days from the date thereof, why the Board or the Hearing Officer should not determine that the interests of law or justice require that the person be sanctioned by, where applicable, dismissal of his or her claim or interest, the striking of his or her answer, or the imposition of some other appropriate sanction, including but not limited to the award of attorneys' fees and costs incurred in responding to a prohibited ex parte communication. Sanctions shall be commensurate with the seriousness and unreasonableness of the offense, accounting for, among other things, the advertency or inadvertency of the prohibited communication.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly makes or causes to be made a prohibited ex parte communication is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

§ 9.05(a)

(a) *Informal Resolution.* At any time before a covered employee who has filed a formal request for counseling files a complaint under section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, September 18, 1996.

Hon. NEWT GINGRICH,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. §1384(b)), I am transmitting on behalf of the Board of Directors the enclosed notice of proposed rulemaking regulations under Sections 210 and 215 of the Act for publication in the Congressional Record.

The Congressional Accountability Act specifies that the enclosed notice be published on the first day on which both Houses are in session following this transmittal.

Sincerely,

GLEN D. NAGER,
Chair of the Board.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Section 210 of the Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §§1301–1438, as applied to covered entities of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and public access statutes to covered entities within the Legislative Branch. Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to certain covered entities. 2 U.S.C. §1331(b). The above provisions of section 210 are effective on January 1, 1997. 2 U.S.C. §1331(h).

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the Department of Justice and the Secretary of Transportation regarding the development of these regulations in accordance with section 304(g)(2) of the CAA. The Civil Rights Division of the Justice Department and the Department of Transportation provided helpful comments and assistance during the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed an inspection of all covered facilities for compliance with disability access standards under section 210 of the CAA and has submitted his final report to Congress. Based on information gleaned from these consultations and the experience gained from the General Counsel's inspections, the Board is publishing these proposed regulations, pursuant to section 210(e) of the CAA, 2 U.S.C. §1331(e).

The purpose of these regulations is to implement section 210 of the CAA. In this Notice of Proposed Rulemaking (''NPRM'' or ''Notice'') the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities. Accordingly:

(1) *Senate.* It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance s Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426-1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM-201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 724-9250 (voice), (202) 426-1912 (TTY). This Notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Services Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224-2705 (voice), (202) 224-5574 (TTY).

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 (CAA), Pub.L. 104-1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301-1438. In general, the CAA applies the rights and protections of eleven federal labor and employment and public access statutes to covered employees and employing offices.

Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131-12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

2 U.S.C. §1331(b).

Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of services, programs, or activities by any ''public entity''. Section 210(b)(2) of the CAA defines the term ''public entity'' for Title II purposes as any entity listed above that provides public services, programs, or activities. 2 U.S.C. §1331(b)(2).

Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1331(e). Section 210(e) further states that such regulations ''shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' *Id.* Section 210(e) further provides that the regulations shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. 2 U.S.C. §1331(e).

In developing these proposed regulations, a number of issues have been identified and explored. The Board has proposed to resolve these issues as described below.

A. In general

1. *Public services and accommodations regulations promulgated by the Attorney General and the Secretary of Transportation that the board will adopt under section 210(e) of the CAA.*— Section 210(e) requires the Board to issue regulations that are the same as ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the Attorney General and/or the Secretary of Transportation to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). *See, e.g.*, 142 Cong.Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). *See also Reves v. Ernst & Young,* 113 S.Ct. 1163, 1169 (1993) (where same phrase or term is used in two different places in the same statute, it is reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury,* 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of the same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the Attorney General and the Secretary of Transportation, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA. As explained more fully below, the Board proposes to adopt the following otherwise applicable regulations of the Attorney General published at Parts 35 and 36 of Title 28 of the Code of Federal Regulations (''CFR'') and those of the Secretary of Transportation published at Parts 37 and 38 of Title 49 of the CFR:

1. *Attorney General's regulations at Part 35 of Title 28 of the CFR:* The Attorney General's regulations at Part 35 implement subtitle A of Title II of the ADA (sections 201 through 205), the rights and protections of which are applied to covered entities under section 210(b) of the CAA. *See* 28 CFR §35.101 (Purpose). Therefore, the Board determines that these regulations will be adopted in the proposed regulations under section 210(e).

2. *Attorney General's regulations at Part 36 of Title 28 of the CFR:* The Attorney General's regulations at Part 36 implement Title III of the ADA (sections 301 through 309). *See* 28 CFR §36.101 (Purpose). Section 210(b) only applies the rights and protections of three sections of Title III with respect to public accommodations: prohibitions against discrimination (section 302), provisions regarding new construction and alterations (section 303), and provisions regarding examinations and courses (section 309). Therefore, only those regulations in Part 36 that are reasonably necessary to implement the statutory provisions of sections 302, 303, and 309 will be adopted by the Board under section 210(e) of the CAA.

3. *Secretary of Transportation regulations at Parts 37 and 38 of Title 49 of the CFR:* The Secretary's regulations at Parts 37 and 38 implement the transportation provisions of Title II and Title III of the ADA. *See* 49 CFR §§37.101 (Purpose) and 38.1 (Purpose). The provisions of Title II and Title III of the ADA relating to transportation and applied to covered entities by section 210(b) of the CAA are subtitle B of Title II (sections 221 through 230) and certain portions of section 302 of Title III. Thus, those regulations of the Secretary that are reasonably necessary to implement the statutory provisions of sections 221 through 230, 302, and 303 of the ADA will be adopted by the Board under section 210(e) of the CAA.

The Board proposes not to adopt those regulatory provisions of the regulations of the Attorney General or those of the Secretary that have no conceivable applicability to operations of entities within the Legislative Branch or are unlikely to be invoked. *See* 141 Cong. Rec. at S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 210(e) requires a regulation. *See* section 411 of the CAA, 2 U.S.C. §1411.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes, the Board does not propose substantial departure from otherwise applicable Secretary's regulations.

The Board notes that the General Counsel applied the above-referenced standards of Parts 35 and 36 of the Attorney General's regulations and Parts 37 and 38 of the Secretary's regulations during his initial inspection of all Legislative Branch facilities pursuant to section 210(f) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of disability standards under section 210, as well as the responsibility for inspecting covered facilities to ensure compliance. According to the General Counsel's final inspection report, the Title II and Title III regulations encompass the following requirements:

1. *Program accessibility:* This standard is applied to ensure physical access to public programs, services, or activities. Under this standard, covered entities must modify policies, practices, and procedures to ensure an equal opportunity for individuals with disabilities. If policy and procedural modifications are ineffective, then structural modifications may be required.

2. *Effective communication:* This standard requires covered entities to make sure that their communications with individuals with disabilities (such as in the context of constituent meetings and committee hearings) are as effective as their communications with others. Covered entities are required to make information available in alternate formats such as large print, Braille, or audio tape, or use methods that provide individuals with disabilities the opportunity to effectively communicate, such as sign language interpreters or the use of pen and paper. Primary consideration must be given to the method preferred by the individual. For telecommunications, the use of text telephones (TTY's) or the use of relay services is required.

3. *ADA Standards for Accessible Design:* These standards are applied to architectural barriers, including structural barriers to communication, such as telephone booths, to ensure that existing facilities, new construction, and new alterations, are accessible to individuals with disabilities.

See Inspection Report, App. A-3—A-4.

The Board recognizes that, as with other obligations under the CAA, covered entities will need information and guidance regarding compliance with these ADA standards as adopted in these proposed regulations, which the Office will provide as part of its education and information activities.

2. *Modification of regulations of the Attorney General and the Secretary*.—The Board has considered whether and to what extent it should modify otherwise applicable substantive public service and accommodation standards of the Attorney General and the Secretary. As the Board has noted in prior rulemakings, the language and legislative history of the CAA leads the Board to conclude that, absent clear statutory language to the contrary, the Board should hew as closely as possible to the text of otherwise applicable regulations promulgated by the appropriate executive branch agency to implement the statutory provisions applied to the Legislative Branch by the CAA. *See* 142 Cong. Rec. S221, S222 (daily ed. Jan. 22, 1996) (Notice of Adoption of Rules Implementing Section 203 regulations) (''The CAA was intended not only to bring covered employees the benefits of the . . . incorporated laws, but also require Congress to experience the same compliance burdens faced by other employers so that it could more fairly legislate in this area.''). Thus, consistent with its prior decisions, the Board proposes to issue the regulations of the Attorney General and the Secretary with only technical changes in the nomenclature and deletion of those sections clearly inapplicable to the Legislative Branch. *See, e.g.*, 141 Cong. Rec. S17603-S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations).

This conclusion is supported by the General Counsel's inspection report, which applied the substantive public service and accommodation standards to covered facilities in the course of his initial inspections under section 210(f) of the CAA. Specifically, there was nothing about the reported condition of facilities within the Legislative Branch that suggested that they were so different from comparable private sector and state and local governmental facilities as to require a public service and accommodations standard different than those applied by the Attorney General and the Secretary. *See generally* Gen. Couns., Off. Compliance, ''Report on Initial Inspections of Facilities for Compliance with Americans With Disability Act Standards Under Section 210'' (1996) (''Disability Access Report''). Thus, with the exception of nonsubstantive technical and nomenclature changes, the Board proposes no departure from the text of otherwise applicable portions of the regulations of the Attorney General and those of the Secretary.

3. Specific issues regarding the Attorney General's title II regulations (part 35, 28 CFR).

a. *Self-evaluation, notice, and designation of responsible employee and adoption of grievance provisions (sections 35.105, 35.106, and 35.107).*—Section 35.105 of the Attorney General's regulations establishes a requirement that all ''public entities'' evaluate their current policies and practices to identify and correct any that are inconsistent with accessibility requirements under the regulation. Those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for three years. This self-evaluation does not cover activities covered by the Department of Transportation regulations (implementing sections 221 through 230 of the ADA). Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and the regulations. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public and that describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. *See* 56 Fed. Reg. 35694, 35702 (July 26, 1991) (preamble to final rule regarding Part 35). Section 35.107 requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. This provision establishes an alternative dispute resolution mechanism without requiring the complainant to resort to legal complaint procedures under the ADA. However, the complainant is not required to exhaust these procedures before filing a complaint under the ADA. *See* 56 Fed. Reg. at 35702.

The Board has considered whether and to what extent it may and should impose these recordkeeping, notice, and grievance requirements on covered entities. In contrast to the recordkeeping requirements of other laws applied by the CAA (such as the Fair Labor Standards Act) which were not included in sections of the laws applied to covered employees and employing offices by the CAA, the recordkeeping, notice, and grievance requirements in sections 35.105, 35.106, and 35.107 of the Attorney General's regulations implement subtitle A of Title II of the ADA, which is applied to covered entities under section 210(b) of the CAA. *See* 28 CFR §35.101; *see also* 28 CFR, pt. 35, App. A at 456–57 (section-by-section analysis). Thus, these regulations have been included in the Board's proposed regulations. *Compare* 141 Cong. Rec. S17603, S17604 (daily ed. Nov. 28, 1995) (recordkeeping requirements of the FLSA not included within the provisions applied by section 203 of the CAA cannot be the subject of Board rulemaking), 142 Cong. Rec. S221, S222 (daily ed. Jan. 22, 1996) (Notice of Adoption of Regulations Implementing Section 203) (same), and 141 Cong. Rec. S17628 (same rationale regarding recordkeeping requirements of the Family and Medical Leave Act) *with* 141 Cong. Rec. at 17657 (daily ed. Jan. 22, 1996) (recordkeeping requirements included

within portion of Employee Polygraph Protection Act applied by section 204 of the CAA must be included within the proposed rules).

The Board also retains the 50 employee cut-off for imposing self-evaluation record-keeping and grievance requirements on covered entities. Given that state and local government entities covered by Title II of the ADA have agencies of comparable size to entities within the Legislative Branch, the Board at present sees no reason to impose a different threshold for such obligations. Therefore, these provisions will be adopted as written, unless comments establish that there is ''good cause'' for modification.

b. *Retaliation or coercion (section 35.134).*—Section 35.134 of the Attorney General's regulations implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 28 CFR pt. 35, App. A at 464 (section-by-section analysis). Section 35.134 is not a provision which implements a right or protection applied to covered entities under section 210(b) of the CAA and, therefore, it will not be included within the adopted regulations.

c. *Employment discrimination provisions (section 35.140).*—Section 35.140 of the Attorney General's regulations prohibits employment discrimination by covered public entities. Section 35.140 implements Title II of the ADA, which has been interpreted to apply to all activities of a public entity, including employment. *See* 56 Fed. Reg. at 35707 (preamble to final rule regarding Part 35). However, section 210(c) of the CAA states that, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 201 of [the CAA].'' 2 U.S.C. §1331(c). The Board proposes to adopt the employment discrimination provisions of section 35.140 as part of its regulations under section 210(e), and also to add a statement that, pursuant to section 210(c) of the CAA, section 201 of the CAA provides the exclusive remedy for any such employment discrimination. In the Board's judgment, making such a change satisfies the CAA's ''good cause'' requirement.

d. *Effective dates.*—In several portions of Part 35 of the Attorney General's regulations, references are made to dates such as the effective date of the Part 35 regulations or effective dates derived from the statutory provisions of the ADA. *See, e.g.*, 28 CFR §§35.150(c), (d), and 35.151(a); *see also* 56 Fed. Reg. at 35710 (preamble to final rule regarding Part 35). The Board proposes to substitute dates which correspond to analogous periods for the purposes of the CAA. In this way covered entities under section 210 may have the same time to come into compliance relative to the effective date of section 210 of the CAA afforded public entities subject to Title II of the ADA. In the Board's judgment, such changes satisfy the CAA's ''good cause'' requirement.

e. *Compliance procedures.*—Subpart F of the Attorney General's regulations (sections 35.170 through 35.189) set forth administrative enforcement procedures under Title II. Subpart F implements the provisions of section 203 of the ADA, which is applied to covered entities under section 210 of the CAA. Although procedural in nature, such provisions address the remedies, procedures, and rights under section 203 of the ADA, and thus the otherwise applicable provisions of these regulations are ''substantive regulations'' for section 210(e) purposes. *See* 142 Cong. Rec. at S5071–72 (similar analysis under section 220(d) of the CAA). However, since section 303 reserves to the Executive Director the authority to promulgate regulations that ''govern the procedures of the Office,'' and since the Board believes that the benefit of having one set of procedural rules provides the ''good cause'' for modifying the Attorney General's regulations, the Board proposes to incorporate the provisions of Subpart F into the Office's procedural rules, to omit provisions that set forth procedures which conflict with express provisions of section 210 of the CAA or are already provided for under comparable provisions of the Office's rules, and to omit rules with no applicability to the Legislative Branch (such as provisions covering entities subject to section 504 of the Rehabilitation Act, provisions regarding State immunity, and provisions regarding referral of complaints to the Justice Department). *See* 142 Cong. Rec. at S5071–72 (similar analysis and conclusion under section 220(d) of the CAA).

f. *Designated agencies (Subpart G).*—Subpart G of the Attorney General's regulations designates the Federal agencies responsible for investigating complaints under Title II of the ADA. Given the structure of the CAA, such provisions are not applicable to covered Legislative Branch entities and, therefore, will not be adopted under section 210(e).

g. *Appendix to Part 35.*—The Board proposes not to adopt Appendix A to Part 35, the section-by-section analysis of Part 35. Since the Board has only adopted portions of the Attorney General's Part 35 regulations and modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix A. However, the Board notes that the section-by-section analysis may have some relevance to interpreting sections of Part 35 which the Board has adopted without change.

4. *Specific issues regarding the Attorney General's title III regulations (part 36, 28 CFR).*

a. *''Ownership'' or ''leasing'' of places of public accommodation, landlord and tenant obligations (sections 36.104 and 36.201(b)).*—In section 36.104 of the Attorney General's regulations (Definitions), the term ''public accommodations'' is defined as ''a private entity that owns, leases (or leases to), or operates a place of public accommodation.'' Section 36.201(b) delineates the respective obligations of landlords and tenants under the ADA. It provides that the landlord that owns the building that houses the place of public accommodation, as well as the tenant that owns or operates the place of public accommodation, are public accommodations that have obligations under the regulations. Section 36.201(b) further provides that, as between the parties, allocation of responsibility for compliance may be determined by lease or other contract. *See* 36 CFR, pt. 36, App. B at 593–94 (section-by-section analysis).

On its face, these provisions do not apply to facilities within the Legislative Branch. For example, covered entities do not ''own'' the buildings or facilities housing a place of public accommodation in the way that private entities do. Similarly, the Board is unaware of any situations in which an otherwise covered entity within the Legislative Branch may ''lease'' its facilities to another Legislative Branch entity. The only lease agreements of which the Board is aware would be between otherwise covered entities and persons or entities over which the CAA has no jurisdiction. For example, the General Services Administration or a private building owner may lease space to Congressional offices, but neither entity would fall within the CAA's definition of a covered entity.

Although the concepts of ''ownership'' or ''leasing'' do not appear to apply to facilities within the Legislative Branch, the Architect of the Capitol does have statutory superintendence responsibility for certain legislative branch buildings and facilities, including the Capitol Building, which includes duties and responsibilities analogous to those of a ''landlord''. *See* 40 U.S.C. §§ 163–166 (Capitol Building), 167–175 and 185a (House and Senate office buildings), 193a (Capitol grounds), and 216b (Botanical Garden). As noted in section B.2 of this Notice, *infra*, the concept of ''superintendence'' may be relevant to determining whether an entity ''operates'' a place of public accommodation within the meaning of section 210(b). Although the provisions of section 36.201(b) of the Attorney General's regulations are not directly applicable, the Board believes that, where two or more entities may have compliance obligations under section 210(b) as ''responsible entities'' under the proposed regulations, those entities should have the ability to allocate responsibility by agreement similar to the case of landlords and tenants with respect to public accommodations under Title III of the ADA. Thus, the proposed regulations adopt such provisions modeled after section 36.201(b) of the Attorney General's regulations. However, by promulgating this provision, the Board does not intend any substantive change in the statutory responsibility of entities under section 210(b) or the applicable substantive rights and protections of the ADA applied thereunder. *See* 142 Cong. Rec. at S270 (final rule under section 205 of the CAA substitutes the term ''privatization'' for ''sale of business'' in the Secretary of Labor's regulations under the Worker Adjustment Retraining and Notification Act).

b. *Effective dates.*—Section 36.401(a) of the Attorney General's regulations provides generally that all facilities designed and constructed for first occupancy later than January 26, 1993 (30 months after the date of enactment of the ADA) must be readily accessible to and usable by individual with disabilities. Section 36.401 implements section 303 of the ADA, which is applied to covered facilities under section 210(b) of the CAA. Section 303 provides the compliance date regarding new construction is 30 months after the date of enactment. Consistent with its resolution of a similar issue with respect to adoption of the Attorney General's Title II regulations, the Board proposes to substitute a date 30 months after the date of enactment of section 210 of the CAA (*i.e.*, July 23, 1997) in the places that it appears in section 36.401(a)(1), (a)(2), (a)(2)(i), and (a)(2)(ii). In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. Similarly, the Board will substitute the effective date of section 210 of the CAA (January 1, 1997) for the effective date of Titles II and III of the ADA (July 26, 1992) wherever it appears in sections 36.151, 36.401, 36.402, and 36.403 to give covered entities the equivalent time benefits under the CAA that public and private entities enjoyed prior to the effective date of their obligations under the ADA. *See* 56 Fed. Reg. 7452, 7472 (Feb. 22, 1991) (preamble to NPRM regarding Part 36), and section 3.d. of this Notice (similar resolution of issue under Part 35 regulations). Other dates contained in these regulations are derived from the statutory provisions of the ADA. The Board has determined there is ''good cause'' to substitute dates that correspond to analogous periods for the purposes of the CAA.

c. *Retaliation or coercion (section 36.206).*—Section 36.206 of the Attorney General's regulations implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 56 Fed. Reg. at 7462–63 (preamble to NPRM regarding Part 36); 28 CFR pt. 36, App. B at 598 (section-by-section analysis). Section 36.206 is not a provision which implements a right or protection applied to covered entities under section 210(b) of the CAA and therefore will not be included within the

adopted regulations. The Board notes, however, that section 207 of the CAA provides a comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, although section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.

d. *Places of public accommodations in private residences (section 36.207).*—Section 36.207 of the Attorney General's regulations deals with the situation where all or part of a home may be used to house a place of public accommodation. *See* 28 CFR pt. 36, App. B at 599 (section-by-section analysis). The Board takes notice that some Members of the Congress may use all or part of their own residences as a District or State office in which they may receive constituents, conduct meetings, and other activities which may result in the area being deemed a place of public accommodation within the meaning of section 210 of the CAA. Therefore, the Board proposes adoption of this provision.

e. *Insurance provisions (section 36.212).*—Section 36.212 of the Attorney General's regulations restates section 501(c) of the ADA, which provides that the ADA shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, so long as such practices are not used to evade the purposes of the ADA. *See* 56 Fed. Reg. at 7464-65 (preamble to NPRM regarding Part 36); 28 CFR pt. 36, App. B at 603 (section-by-section analysis). As a limitation on the scope of the rights and protections of Title III of the ADA, these provisions may be applied under the CAA. *See* section 225(f) of the CAA, 2 U.S.C. §1361(f). Although section 36.212 appears intended primarily to cover insurance companies, some of the terms of its provisions may be broad enough to have applicability to covered entities. Accordingly, the Board proposes to adopt, with appropriate modifications, section 36.212.

f. *Enforcement Procedures (Subpart E).*—Subpart E of the Attorney General's regulations (sections 36.501 through 36.599) set forth the enforcement procedures under Title III of the ADA. As the Justice Department noted in its NPRM regarding subpart E, the Department of Justice does not have the authority to establish procedures for judicial review and enforcement and, therefore, ''Subpart E generally restates the statutory procedures for enforcement''. 28 CFR pt. 36, App. B at 638 (section-by-section analysis). Additionally, the regulations derive from the provisions of section 308 of the ADA, which is not applied to covered entities under section 210(b) of the CAA. Thus, the regulations in subpart E are not promulgated by the Attorney General as substantive regulations to implement the statutory provisions of the ADA referred to in section 210(b), within the meaning of section 210(e).

g. *Certification of State Laws or Local Building Codes (subpart F).*—Subpart F of the Attorney General's regulations establishes procedures to implement section 308(b)(1)(A)(ii) of the ADA regarding compliance with State laws or building codes as evidence of compliance with accessibility standards under the ADA. 28 CFR pt. 36, App. B at 640 (section-by-section analysis). Section 308 is not one of the laws applied to covered entities under section 210(b) of the CAA and, therefore, these regulations will not be adopted under section 210(e).

h. *Appendices to Part 36.*—Part 36 of the Attorney General's regulations includes two appendices, only one of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (ADA Accessibility Guidelines for Buildings and Facilities (''ADAAG'')), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 28 CFR pt. 36, App. A. The Board also proposes to adopt as Appendix B to these regulations the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR pt. 101–19.6). Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and others in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title III of the ADA. *See* 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes). Covered entities may also use the Attorney General's ADA Technical Assistance Manual and other similar publications for guidance regarding their obligations under regulations adopted by the Board without change.

The Board proposes not to adopt Appendix B, the section-by-section analysis of Part 36. Since the Board has only adopted portions of the Attorney General's Part 36 regulations and modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix B. However, the Board notes that the section-by-section analysis may have some relevance to interpreting the sections of Part 36 that the Board has adopted without change.

5. *Specific issues regarding the Secretary of Transportation's title II and title III regulations (parts 37 and 38, 49 CFR).*

a. *Definitions (section 37.3).*—As noted above, the Board will make technical and nomenclature changes to the included regulations to adapt them to the CAA. In addition, certain definitions in section 37.3 of the Secretary's regulations relate strictly to implementation of Part II of Title II of the ADA (sections 241 through 246), dealing with public transportation by intercity and commuter rail. Sections 241 through 246 of the ADA were not within the rights and protections applied to covered entities under section 210(b) and, therefore, the regulations implementing such sections are not substantive regulations of the Secretary required to be adopted by the Board within the meaning of section 210(e). Accordingly, the Board will exclude from its regulations the definitions of terms such as ''commerce,'' ''commuter authority,'' ''commuter rail car,'' ''commuter rail transportation,'' ''intercity rail passenger car,'' and ''intercity rail transportation,'' which relate to sections 241 through 246 of the ADA.

b. *Nondiscrimination (section 37.5).*—Subsection (f) of section 37.5 of the Secretary's regulations relates to private entities primarily engaged in the business of transporting people and whose operations affect commerce. This subsection implements section 304 of the ADA, which is not a right or protection applied to covered entities under section 210(b) of the CAA. *See* 56 Fed. Reg. 13856, 13858 (April 4, 1991) (preamble to NPRM regarding Part 37). Therefore, it is not a regulation of the Secretary included within the scope of rulemaking under section 210(e) of the CAA and will not be included in these regulations.

c. *References to the Administrator.*—In several provisions of the Secretary's regulations which the Board will include as substantive regulations, reference is made to the Administrator of the Federal Transit Administration (''Administrator'' or ''FTA''). Several regulations provide that entities may make requests to the Administrator for waivers or other relief from the accessibility requirements of the regulations. *See, e.g.,* section 37.7(b) (determination of equivalent facilitation), 37.71 (waiver of accessibility requirements for new buses), 37.135 (submission of paratransit plans), and 37.153 (FTA waiver determinations).

These provisions will be invoked rarely, if at all. Nevertheless, the Board proposes to adopt these provisions and has determined that there is ''good cause'' to substitute the General Counsel of the Office of Compliance for the Administrator of the FTA. There is some concern that authorizing the FTA, an executive branch agency, to relieve covered entities from the accessibility requirements of section 210 may be tantamount to executive enforcement of section 210. *See* section 225(f)(3) (''This Act shall not be construed to authorize enforcement by the executive branch of this Act.''). In this context, the General Counsel, as the officer responsible for investigating and prosecuting complaints under section 210, *see* section 210(d) and (f) of the CAA, is the appropriate analogue for the Administrator. Moreover, if such a waiver request is made by covered entities which requires FTA expertise, such assistance may be obtained by the Executive Director through the use of detailees or consultants. *See* CAA sections 210(f)(4) and 302(e) and (f).

d. *State Administering Agencies.*— Several portions of the Secretary's regulations refer to obligations of entities regulated by state agencies administering federal transportation funds. *See, e.g.,* sections 37.77(d) (requires filing of equivalent service certificates with state administering agency), 37.135(f) (submission of paratransit development plan to state administering agency) and 37.145 (State comments on paratransit plans). Any references to obligations not imposed on covered entities, such as state law requirements and laws regulating entities that receive Federal financial assistance, will be excluded from these proposed regulations.

e. *Dates (sections 37.9, 37.71 through 37.87, 37.91, and 37.151).*—There are several references in the Secretary's regulations to dates from which duties commence and by which certain action should be taken. *See* sections 37.9, 37.13, 37.41, 37.43, 37.47, 37.71 through 37.87, 37.91, and 37.151. The dates set forth in the regulations are derived from the statutory provisions of the ADA. *See, e.g.,* 49 CFR, pt. 37, App. D at 497, 501-02 (section-by-section analysis). The Board has determined that there is ''good cause'' to substitute dates which correspond to analogous periods for purposes of the CAA.

f. *Administrative Enforcement (section 37.11).*—Section 37.11 of the Secretary's regulations does not implement any provision of the ADA applied to covered entities under section 210 of the CAA. Moreover, the enforcement procedures of section 210 are explicitly provided for in section 210(d) (''Available Procedures''). Accordingly, this section will not be included within the Board's proposed regulations. The subject matter of enforcement procedures will be addressed, if necessary, under the Office's procedural rules.

g. *Applicability and Transportation Facilities (subparts B and C).*—Certain sections of Subparts B (Applicability) and C (Transportation Facilities) of the Secretary's regulations were promulgated to implement sections 242 and 304 of the ADA, provisions that are not applied to covered entities under section 210(b) of the CAA or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.21(a)(2) and (b) (relating to private entities under section 304 of the ADA and private entities receiving Federal assistance from the Transportation Department), 37.25 (university transportation systems), 37.29 (private taxi services), 37.33 (airport

transportation systems), 37.37(a) and 37.37(e)-(g) (relating to coverage of private entities and other entities under section 304 of the ADA), and 37.49–37.57 (relating to intercity and commuter rail systems). Similarly, the Board proposes modifying sections 37.21(c), 37.37(d), and 37.37(h) and other sections where references are made to requirements or circumstances strictly encompassed by the provisions of section 304 of the ADA and, therefore, not applicable to covered entities under the CAA. *See, e.g.,* sections 37.25–37.27 (transportation for elementary and secondary education systems).

h. *Acquisition of Accessible Vehicles by Public Entities (Subpart D).*—Subpart D (sections 37.71 through 37.95) of the Secretary's regulations relate to acquisition of accessible vehicles by public entities. Certain sections of subpart D were promulgated to implement sections 242 and 304 of the ADA, which were not applied to covered entities under section 210(b) of the CAA, or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.87–37.91 and 37.93(b) (relating to intercity and commuter rail service).

i. *Acquisition of Accessible Vehicles by Private Entities (Subpart E).*—Subpart E (sections 37.101 through 37.109) of the Secretary's regulations relates to acquisition of accessible vehicles by private entities. Section 37.101, relating to acquisition of vehicles by private entities not primarily engaged in the business of transporting people, implements section 302 of the ADA, which is applied to covered entities under section 210(b). Therefore, the Board will adopt section 37.101 as part of its section 210(e) regulations. Sections 37.103, 37.107, and 37.109 of the regulations implement section 304 of the ADA, which is inapplicable to covered entities under the ADA. Therefore, the Board proposes not to include them within its substantive regulations under section 210(e) of the CAA.

j. *Appendices to Part 37.*—Part 37 of the Secretary's regulations includes several appendices, only one of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (Standards for Accessible Transportation Facilities, ADA Accessibility Guidelines for Buildings and Facilities), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 49 CFR pt. 37, App. A. Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and other in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title II and Title III of the ADA. *See* 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes).

The Board proposes not to adopt Appendix B, which gives the addresses of FTA regional offices. Such information is not relevant to covered entities under the CAA. The Board also proposes to adopt portions of Appendix C, which contain forms for certification of equivalent service. The Board will delete reference to the requirement that public entities receiving financial assistance under the Federal Transit Act submit the certification to their state program office before procuring any inaccessible vehicle. This certification form appears to be irrelevant to entities covered by the CAA and therefore will not be adopted by the Board.

Finally, the Board does not adopt Appendix D to Part 37, the section-by-section analysis of Part 37. Since the Board has only adopted portions of the Secretary's Part 37 regulations and has modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix D. However, the Board notes that the section-by-section analysis may have some relevance in interpreting the sections of Part 37 that the Board has adopted without change.

k. *ADA Accessibility Specifications for Transportation Vehicles (Part 38).*—Part 38 of the Secretary's regulations contains accessibility standards for all types of transportation vehicles. Part 38 is divided into vehicle types: Subpart B, Buses, Vans, and Systems; Subpart C, Rapid Rail Vehicles and Systems; Subpart D, Light Rail Vehicles and Systems; Subpart E, Commuter Rail Cars and Systems; Subpart F, Intercity Rail Cars and Systems; Subpart G, Over-the-Road Buses and Systems; and Subpart H, Other Vehicles and Systems. Section 38.2 contains the concept of equivalent facilitation, under which an entity is permitted to request approval for an alternative method of compliance. As noted in section 5.c. of this Notice, the Board proposes that such determinations be made by the General Counsel rather than the Administrator.

The Board proposes to adopt, with minimal technical and nomenclature changes, the regulations contained in Part 38 and accompanying appendix, with the exception of the following subparts which the Board has determined implement portions of the ADA not applied to covered entities under section 210(b) of the CAA and/or the Board believe have no conceivable applicability to legislative branch operations: Subpart E, Commuter Rail Cars and Systems; and Subpart F, Intercity Rail Cars and Systems.

B. Proposed regulations

1. *General Provisions.*—The proposed regulations include a section on matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance.

2. *Method for Identifying Responsible Entities and Establishing Categories of Violations.*—Section 210(e)(3) of the CAA directs the Board to include in its regulations a method for identifying, for purposes of section 210 and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. In developing these proposed rules, the Board considered the final Report of the General Counsel, which applied the public services and accommodations standards of section 210 to covered entities during his initial inspections under section 210(f). *See* Disability Access Report.

In developing a method for identifying the entity responsible for a correction of a violation of section 210, the Board must consider the terms of section 210 of the CAA and the precise nature of the obligations imposed on covered entities under Titles II and III of the ADA under section 210(b). The Board cannot promulgate regulations which purport to expand or limit these obligations contrary to the language of the statute or the intent of Congress. *See, e.g., White v. I.N.S.,* 75 F.3d 213, 215 (5th Cir. 1996) (agency cannot promulgate even substantive rules that are contrary to statute; if intent of Congress is clear, agency must give effect to that unambiguously expressed intent); *Conlan v. U.S. Dep't of Labor,* 76 F.3d 271, 274 (9th Cir. 1996). As set forth below, the Board has developed a method for identifying the entity responsible for correction of a violation of section 210(b) which includes providing definitions for terms such as ''operate a place of public accommodation,'' and ''public entity'' for the purpose of section 210.

Section 210(b) applies the rights and protections of two separate and independent provisions of the ADA to covered entities:

The rights and protections of Title II of the ADA (sections 201 through 230) applied by section 210(b) of the CAA deals with ''public entities.'' It prohibits discrimination against any qualified individual with a disability by any ''public entity'' regarding all public activities, programs, and services of that entity. Title II imposes an obligation on public entities to make ''reasonable modifications to rules, policies, or practices,'' to achieve ''the removal of architectural, communication, or transportation barriers,'' and to ensure ''provision of auxiliary aids and services.'' Title II also includes provisions regarding accessibility of public transportation systems.

The rights and protections of Title III of the ADA applied by section 210(b) of the CAA (sections 302, 303, and 309) deals with ''public accommodations.'' It prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of ''any place of public accommodation.'' Specifically, such discrimination includes: (1) discriminatory eligibility criteria; (2) failure to make reasonable modifications; (3) failure to provide auxiliary aids and services; (4) failure to remove architectural barriers and communication barriers that are structural in nature where removal of such barriers are ''readily achievable''; and (5) failure to make goods, services, facilities, privileges, advantages, or accommodations available through alternative methods where removal of barriers is not readily achievable. In contrast to Title II, Title III defines a ''place of public accommodation'' as ''private entities'' (which excludes ''public entities'' covered under Title II) falling within twelve specified categories of activities. Title III also contains requirements regarding specified transportation services.

As set forth in the ADA, Title II and Title III were designed to impose separate legal obligations (which are expressed in slightly different terms) on two separate and independent classes of actors: ''public entities'' (which have Title II obligations) and private entities that are ''places of public accommodation'' (which have Title III obligations). Under the ADA, a public entity, by definition, can never be subjected to Title III of the ADA, which covers only private entities. Conversely, private entities cannot be covered by Title II. *See, e.g.,* 28 CFR, pt. 36, App. B at 587 (section-by-section analysis of Part 36) (''Facilities operated by government agencies or other public entities as defined in this section do not qualify as places of public accommodation. The action of public entities are governed by title II of the ADA''); ADA Title III Technical Assistance Manual at p. 7 (1993).

In section 210(b) of the CAA, Congress applied the rights and protections of all of Title II and parts of Title III to specified Legislative Branch entities without making either Title's coverage mutually exclusive. Thus, in contrast to the ADA, under the CAA, a single entity could conceivably have obligations under both Title II and Title III, if it meets the criteria for coverage under both Titles.

The method developed by the Board in these regulations to identify the entity responsible for correcting a violation of section 210(b) is set forth in section 1.105 of the proposed regulations. Section 1.105 is based on the Board's interpretation of the statutory coverage for Legislative Branch entities under Title II and Title III, as applied by section 210(b).

Under the proposed rule, the entity responsible for correcting a violation of the obligations under Title II of the ADA with respect to the provision of public services, programs, or activities, as applied by section 210(b) is the entity that, with respect to the particular violation, is a covered ''public entity'' within the meaning of section 210(b) that provided the particular public service, program, or activity that forms the basis of the violation. Similarly, the entity responsible for correcting a violation of the obligations under Title III of the ADA, as applied by section 210(b) is the entity that, with respect to the particular violation, operates the ''place of public accommodation'' within the meaning of section 210(b) that forms the basis of the violation. Thus, the regulations distinguish responsible entities for Title II and Title III purposes as follows:

1. *The rights and protections of Title II (sections 201 through 203 of the ADA):* For the purpose of the rights and protections against discrimination under Title II of the ADA, the entity responsible for a violation would be any entity listed in subsection (a) of section 210 of the CAA that is a ''public entity'' as defined by section 210(b)(2) of the CAA and that provided the public service, program, or activity that formed the basis for the particular violation of Title II set forth in the charge filed with the General Counsel or the complaint filed by the General Counsel with the Office under section 210(d) of the CAA. Conversely, if the entity is not a ''public entity'' (that is, the entity provides no public services, programs, or activities) or did not provide the public service, program, or activity that formed the basis for the particular violation of Title II, the entity is not an ''entity responsible for correction of the violation'' within the meaning of these regulations.

2. *The rights and protections of Title III (sections 302, 303, and 309 of the ADA):* For the purpose of the rights and protections against discrimination under Title III of the ADA, the entity responsible for a violation would be any entity listed in subsection (a) of section 210 of the CAA that ''operates a place of public accommodation'' (as defined in these regulations) that forms in whole or in part the basis for the particular violation of Title III.

a. ''Place of public accommodation.'' As used in these regulations, the term ''place of public accommodation'' follows the definition of section 301(7) of the ADA, with appropriate modification to delete the phrase ''private'' and the requirement that the activities affect commerce. These modifications conform the definition to the CAA. *See* section 225(f) of the CAA, 2 U.S.C. §1361(f).

b. ''Operate (a place of public accommodation).'' As applied by section 210(b) of the CAA, section 302(a) of the ADA prohibits discrimination on the basis of disability by any ''[Legislative Branch entity that] owns, leases (or leases to), or operates a place of public accommodation.'' On its face, the terms ''owns, leases (or leases to)'' do not apply to entities within the Legislative Branch. For example, the Board is not aware of any individual covered entity that ''owns'' the buildings or facilities housing a place of public accommodation in the way that private entities do. Similarly, the Board is unaware of any situations in which an otherwise covered entity within the Legislative Branch may ''lease'' its facilities to another Legislative Branch entity. The only lease agreements of which the Board is aware would be between otherwise covered entities and persons or entities over which the CAA has no jurisdiction. For example, the General Services Administration or a private building owner may lease space to Congressional offices, but neither entity would fall within the CAA's definition of covered entity. Thus, the only issue in any case under Title III of the ADA as applied under section 210 would be whether a Legislative Branch entity ''operates'' a place of public accommodation within the meaning of the ADA.

The ADA does not define the term ''operate.'' Thus, the Board ''construe[s] it in accord with its ordinary and natural meaning.'' *Smith v. United States*, 113 S.Ct. 2050, 2054 (1993); *White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996), *quoting Pioneer Investment Servs. v. Brunswick Assocs.*, 113 S.Ct. 1489, 1495 (1993) (''Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning.'').

To ''operate,'' in the context of a business operation, means ''to put or keep in operation,'' The Random House College Dictionary 931 (Rev. ed. 1980), ''[t]o control or direct the functioning of,'' Webster's II: New Riverside Dictionary 823 (1988), ''[t]o conduct the affairs of; manage,'' The American Heritage Dictionary 1268 (3d ed. 1992). *Neff v. American Dairy Queen Corp.*, 58 F.3d 1063, 1066 (5th Cir. 1995), *cert. denied* 116 S.Ct. 704 (1996). *See also* Webster's New Universal Unabridged Dictionary 1253 (2d ed. 1983) (''to superintend; to manage; to direct the affairs of; as, to *operate* a mine.'').

In Neff v. American Dairy Queen Corp., supra, the Fifth Circuit considered the meaning of the term ''operate'' in the ADA in the context of franchise store operations. The plaintiff sued American Dairy Queen (''ADQ'') under Title III of the ADA, arguing that the franchise agreement between ADQ and its franchisee (R & S Dairy Queens), in which ADQ retained the right to set standards for buildings and equipment maintenance and the right to ''veto'' proposed structural changes, made it an ''operator'' of the franchisees' stores within the meaning of section 302. The Fifth Circuit rejected this argument:

''Instead, the relevant question in this case is whether ADQ, according to the terms of the franchise agreements with R & S Dairy Queens, controls modification of the San Antonio Stores to cause them to comply with the ADA. * * *

* * * * *

''In sum, while the terms of the [agreement] demonstrate that ADQ retains the right to set standards for building and equipment maintenance and to ''veto'' proposed structural changes, we hold that this supervisory authority, without more, is insufficient to support a holding that ADQ ''operates,'' in the ordinary and natural meaning of that term, the [franchisee store].'' 58 F.3d at 1068. The Board finds the reasoning of the *Neff* court persuasive and adopts its application of the term ''operate'' for Title III purposes in these regulations.

Specifically, for the purposes of determining responsibility under Title III, an entity ''operates'' a place of public accommodation if it superintends, directly controls, or directs the functioning of or manages the specific aspects of the public accommodation that constitute an architectural barrier or a communication barrier that is structural in nature or that otherwise forms the basis for a violation of section 302 of the ADA, as applied by section 210(b) of the CAA. In addition, an entity ''operates'' a place of public accommodation if it assigns such superintendence, control, direction, or management to another entity or person by means of contract or other arrangement. An entity, whether or not a covered entity under these regulations, which contracts with a covered entity stands in the shoes of the covered entity for purposes of determining the application of Title III requirements. Thus, the definition of ''operate'' in these regulations ''includes operation of the place of public accommodation by a person under a contractual or other arrangement or relationship with a covered entity.''

In the absence of such a provision, it is possible that a covered entity, instead of directly controlling the inaccessible features of places of public accommodation, could contract with a private entity, which would then manage the accommodation in such a way as to maintain its inaccessible features. Allowing such self-insulation from liability would clearly conflict with the principles of the ADA as applied by section 210(b) of the CAA. The proposed definition is intended to prevent an otherwise covered entity from ''contracting out'' of its Title III obligations. Where the entity exercises no authority with respect to the modification of the specific aspects of the facilities, programs, activities, or other features of the place of public accommodation that make them inaccessible within the meaning of section 302 of the CAA, the proposed regulation states that the entity does not ''operate'' the place of public accommodation within the meaning of these regulations.

Where an entity merely maintains the general authority to set standards regarding a particular facility or condition at issue, and to ''veto'' proposed changes in the facility or condition, this oversight or supervisory authority, without more, is insufficient to support a finding that the entity ''operates'' the facility or condition within the meaning of these regulations. *See Neff*, 58 F.3d at 1068. Conversely, if the correction of a violation of section 210 of the CAA, including the modification of the facility or condition at issue, can only be accomplished with the active approval or permission of a particular entity, then that entity ''operates'' the facility or condition and is otherwise a responsible entity under this section of the regulations, but only to the extent that the entity withholds such approval or permission.

3. *Future changes in the text of regulations of the Attorney General and the Secretary which have been adopted by the Board.*—The Board proposes that the section 210 regulations adopt the text of the referenced portions of parts the regulations of the Attorney General and the Secretary of Transportation in effect as of the effective date of these regulations. The Board takes notice that the Attorney General and the Secretary have in recent years made frequent changes, both technical and nontechnical, to their Title II and Title III regulations and to the ADAAG standards incorporated by reference therein. The Board interprets the incorporation by reference in the text of the adopted Title II and Title III regulations of documents (such as the ADAAG standards at appendix A to Part 36) to include any future changes to such documents. As the Office receives notice of such changes by the Attorney General or the Secretary, it will advise covered entities and employees as part of its education and information activities. As to changes in the text of the adopted regulations themselves, however, the Board finds that, under the CAA statutory scheme, additional Board rulemaking under section 210(e) will be required. The Board believes that it should afford covered Legislative Branch entities and employees potentially affected by adoption of such changes the opportunity to comment on the propriety of Board adoption of any such changes, and that the Congress should have the opportunity to specifically approve such adoption by the Board. The Board specifically invites comments on this proposal.

4. *Technical and nomenclature changes.*—The proposed regulations make technical and nomenclature changes, where appropriate, to conform to the provisions of the CAA.

Recommended method of approval: The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and entities and facilities of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and entities and facilities of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered entities and facilities be approved by the Congress by concurrent resolution. Signed at Washington, D.C., on this 18th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS (SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

Part 1—Matters of General Applicability to All Regulations Promulgated Under Section 210 of the Congressional Accountability Act of 1995

Sec.
1.101 Purpose and scope
1.102 Definitions
1.103 Coverage
1.104 Notice of protection
1.105 Authority of the Board
1.106 Method for identifying the entity responsible for correction of violations of section 210

§1.101 Purpose and scope.

(a) *Section 210 of the CAA.* Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law and public access statutes to covered employees and employing offices within the legislative branch. Section 210(b) of the CAA provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Title II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician and

(9) the Office of Compliance.

2 U.S.C. §1331(b). Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of public services, programs, activities by any ''public entity.'' Section 210(b)(2) of the CAA provides that for the purpose of applying Title II of the ADA the term ''public entity'' means any entity listed above that provides public services, programs, or activities. Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and to report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1, 35, 36, 37, and 38) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210, including the method of identifying entities responsible for correcting a violation of section 210. Part 35 contains the provisions regarding nondiscrimination on the basis of disability in the provision of public services, programs, or activities of covered entities. Part 36 contains the provisions regarding nondiscrimination on the basis of disability by public accommodations. Part 37 contains the provisions regarding transportation services for individuals with disabilities. Part 38 contains the provisions regarding accessibility specifications for transportation vehicles.

§1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *ADA* means the Americans With Disabilities Act of 1990 (42 U.S.C. §§12131–12150, 12182, 12183, and 12189) as applied to covered entities by Section 210 of the CAA.

(c) The term *covered entity* includes any of the following entities that either provides public services, programs, or activities, and/or that operates a place of public accommodation within the meaning of section 210 of the CAA: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Capitol Guide Service; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden); (8) the Office of the Attending Physician; and (9) the Office of Compliance.

(d) *Board* means the Board of Directors of the Office of Compliance.

(e) *Office* means the Office of Compliance.

(f) *General Counsel* means the General Counsel of the Office of Compliance.

§1.103 Notice of protection.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 210 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

§1.104 Authority of the Board.

Pursuant to sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to promulgate regulations implementing section 210 that are ''the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e). The regulations issued by the Board herein are on all matters for which section 210 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of section 210 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Attorney General and the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Attorney General and/or the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulations or of the statutory provisions of the CAA upon which they are based.

§1.105 Method for identifying the entity responsible for correction of violations of section 210.

(a) *Purpose and scope.* Section 210(e)(3) of the CAA provides that regulations under section 210(e) include a method of identifying, for purposes of this section and for categories of violations of section 210(b), the entity responsible for correcting a particular violation. This section 1.105 sets forth the method for identifying responsible entities for the purpose of allocating responsibility for correcting violations of section 210(b).

(b) *Categories of violations.* Violations of the rights and protections established in section 210(b) of the CAA that may form the basis for a charge filed with the General Counsel under section 210(d)(1) of the CAA or for a complaint filed by the General Counsel under section 210(d)(3) of the CAA fall into one (or both) of two categories:

(i) *Title II violations.* A covered entity may violate section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title II of the ADA (sections 210 through 230), as applied to Legislative Branch entities under section 210(b) of the CAA.

(ii) *Title III violations.* A covered entity may also violate section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title III of the ADA (sections 302, 303, and 309), as applied to Legislative Branch entities under section 210(b) of the CAA.

(c) *Entity Responsible for Correcting a Violation of Title II Rights and Protections.* Correction of a violation of the rights and protections against discrimination under Title II of the ADA, as applied by section 210(b) of the CAA, is the responsibility of any entity listed in subsection (a) of section 210 of the CAA that is a ''public entity,'' as defined by section 210(b)(2) of the CAA, and that provides the specific public service, program, or activity that forms the basis for the particular violation of Title II rights and protections set forth in the charge of discrimination filed with the General Counsel under section 210(d)(1) of the CAA or the complaint filed by the General Counsel with the Office under

section 210(d)(3) of the CAA. As used in this section, an entity provides a public service, program, or activity if it does so itself, or by a person or other entity (whether public or private and regardless of whether that entity is covered under the CAA) under a contractual or other arrangement or relationship with the entity.

(d) *Entity Responsible for Correction of Title III Rights and Protections.* Correction of a violation of the rights and protections against discrimination under Title III of the ADA, as applied by section 210(b) of the CAA, is the responsibility of any entity listed in subsection (a) of section 210 of the CAA that ''operates a place of public accommodation'' (as defined in this section) that forms the basis, in whole or in part, for the particular violation of Title III rights and protections set forth in the charge filed with the General Counsel under section 210(d)(1) of the CAA and/or the complaint filed by the General Counsel with the Office under section 210(d)(3) of the CAA.

(i) Definitions.

As used in this section:

Public accommodation has the meaning set forth in Part 36 of these regulations.

Operates, with respect to the operations of a place of public accommodation, includes the superintendence, control, management, or direction of the function of the aspects of the public accommodation that constitute an architectural barrier or communication barrier that is structural in nature, or that otherwise forms the basis for a violation of the rights and protections of Title III of the ADA as applied under section 210(b) of the CAA.

(ii) As used in this section, an entity operates a place of public accommodation if it does so itself, or by a person or other entity (whether public or private and regardless of whether that entity is covered under the CAA) under a contractual or other arrangement or relationship with the entity.

(e) *Allocation of Responsibility for Correction of Title II and/or Title III Violations.* Where more than one entity is deemed an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for complying with the obligations of Title II and/or Title III of the ADA as applied by section 210(b), and for correction of violations thereunder, may be determined by contract or other enforceable arrangement or relationship.

Part 35—Nondiscrimination on the Basis of Disability in Public Services, Programs, or Activities

Subpart A—General

Subpart B—General Requirements

Subpart C—Employment

Subpart D—Program Accessibility

Subpart E—Communications

SUBPART A—GENERAL

§35.101 Purpose.

The purpose of this part is to effectuate section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 *et seq.*) which, *inter alia,* applies the rights and protections of subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12150), which prohibits discrimination on the basis of disability by public entities.

§35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all public services, programs, and activities provided or made available by public entities as defined by section 210 of the Congressional Accountability Act of 1995.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, as applied by section 210 of the Congressional Accountability Act, they are not subject to the requirements of this part.

§35.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws otherwise applicable to covered entities that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§35.104 Definitions.

For purposes of this part, the term—

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

ADA means the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as applied to covered entities by section 210 of the CAA.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, text telephones (TTY's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Board means the Board of Directors of the Office of Compliance.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment means*—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

General Counsel means the General Counsel of the Office of Compliance.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

§35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the public services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the CAA and this part.

§35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§35.108–35.129 [Reserved]

SUBPART B—GENERAL REQUIREMENTS

§35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the public services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any public aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the public aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the public aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with a public aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate public aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with public aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any public aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the public aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in public services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's public program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the public benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the public service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the public programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The public programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the public service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any public service, program, or activity, unless such criteria can be shown to be necessary for the provision of the public service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing public benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer public services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the CAA or this part which such individual chooses not to accept.

(2) Nothing in the CAA or this part authorizes the representative or guardian of an individual with a disability to decline food,

water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the CAA or this part.

(g) A public entity shall not exclude or otherwise deny equal public services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public entity shall not deny public health services, or public services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§35.133 Maintenance of accessible features.

(a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the CAA or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§35.134 [Reserved]

§35.135 Personal devices and services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§§35.136–35.139 [Reserved]

SUBPART C—EMPLOYMENT

§35.140 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b)(1) For purposes of this part, the requirements of title I of the Americans With Disabilities Act (''ADA''), as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I of the ADA, as applied by section 201 of the CAA.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I of the ADA, as applied by section 201 of the CAA.

(c) Notwithstanding anything contained in this subpart, with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 201 of the CAA.

§§35.141–35.148 [Reserved]

SUBPART D—PROGRAM ACCESSIBILITY

§35.149 Discrimination prohibited.

Except as otherwise provided in §35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the public services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§35.150 Existing facilities.

(a) *General.* A public entity shall operate each public service, program, or activity so that the public service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a public service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the public service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the public benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its public services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer public services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made by within three years of January 1, 1997, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 1, 1997, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the CAA, including covered offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its public programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

§35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 1, 1997.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 1, 1997.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix B to Part 36 of these regulations) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to Part 36 of these regulations) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at 4.1.3(5) and 4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of §35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

§§35.152–35.159 [Reserved]

SUBPART E—COMMUNICATIONS

§35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a public service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§35.161 Text telephones (TTY's).

Where a public entity communicates by telephone with applicants and beneficiaries, TTY's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TTY's and computer modems.

§35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible public services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its public facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible public facilities. The international symbol for accessibility shall be used at each accessible entrance of a public facility.

§35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a public service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the public service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the public service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the public benefits or services provided by the public entity.

§§35.165–35.169 [Reserved]
§§35.170–35.999 [Reserved]

Part 36—Nondiscrimination on the Basis of Disability by Public Accommodations

Subpart A—General

Subpart B—General Requirements

Subpart C—Specific Requirements

Subpart D—New Construction and Alterations

SUBPART A—GENERAL

§36.101 Purpose.

The purpose of this part is to implement section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 et seq.) which, *inter alia,* applies the rights and protections of sections of title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

§36.102 Application.

(a) *General.* This part applies to any—

(1) Public accommodation; or

(2) covered entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

(b) *Public accommodations.* (1) The requirements of this part applicable to public accommodations are set forth in subparts B, C, and D of this part.

(2) The requirements of subparts B and C of this part obligate a public accommodation only with respect to the operations of a place of public accommodation.

(3) The requirements of subpart D of this part obligate a public accommodation only with respect to a facility used as, or designed or constructed for use as, a place of public accommodation.

(c) *Examinations and courses.* The requirements of this part applicable to covered entities that offer examinations or courses as specified in paragraph (a) of this section are set forth in §36.309.

§36.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws otherwise applicable to covered entities that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§36.104 Definitions.

For purposes of this part, the term—

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104-1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

ADA means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, l04 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and

611), as applied to covered entities by section 210 of the CAA.

Covered entity means any entity listed in section 210(a) of the CAA that operates a place of public accommodation.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or as been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is *regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a covered entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a covered entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term ''illegal use of drugs'' does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term ''individual with a disability'' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

Place of public accommodation means a facility, operated by a covered entity, whose operations fall within at least one of the following categories—

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate covered school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Public accommodation means a covered entity that operates a place of public accommodation.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent entity;

(4) If applicable, the overall financial resources of any parent entity; the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent entity;

(4) If applicable, the overall financial resources of any parent entity; the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

SUBPART B—GENERAL REQUIREMENTS

§36.201 General.

Prohibition of discrimination. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any covered entity who operates a place of public accommodation.

§36.202 Activities.

(a) *Denial of participation.* A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) *Participation in unequal benefit.* A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) *Separate benefit.* A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) *Individual or class of individuals.* For purposes of paragraphs (a) through (c) of this section, the term individual or class of individuals refers to the clients or customers of the public accommodation that enter into the contractual, licensing, or other arrangement.

§ 36.203 Integrated settings.

(a) *General.* A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) *Opportunity to participate.* Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different.

(c) *Accommodations and services.* (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the CAA or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 36.204 Administrative methods.

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

§ 36.205 Association.

A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 36.206 [Reserved]

§ 36.207 Places of public accommodation located in private residences.

(a) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this part, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this part.

(b) The portion of the residence covered under paragraph (a) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

§ 36.208 Direct threat.

(a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

(b) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 36.209 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public accommodation from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

§ 36.210 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation.

§ 36.211 Maintenance of accessible features.

(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the CAA or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 36.212 Insurance.

(a) This part shall not be construed to prohibit or restrict—

(1) A covered entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with applicable law; or

(2) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with applicable law; or

(3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to applicable laws that regulate insurance.

(b) Paragraphs (a)(1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of the CAA or this part.

(c) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

§ 36.213 Relationship of subpart B to subparts C and D of this part.

Subpart B of this part sets forth the general principles of nondiscrimination applicable to all entities subject to this part. Subparts C and D of this part provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

§§36.214–36.299 [Reserved]

SUBPART C SPECIFIC REQUIREMENTS

§ 36.301 Eligibility criteria.

(a) *General.* A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) *Safety.* A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) *Charges.* A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the CAA or this part.

§ 36.302 Modifications in policies, practices, or procedures.

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) *Specialties*—(1) *General.* A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) *Illustration—medical specialties.* A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) *Service animals*—(1) *General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) *Care or supervision of service animals.* Nothing in this part requires a public accommodation to supervise or care for a service animal.

(d) *Check-out aisles.* A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles is kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

§36.303 Auxiliary aids and services.

(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) *Examples.* The term ''auxiliary aids and service'' includes—

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, text telephones (TTY's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) *Effective communication.* A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) Text telephones (TTY's). (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TTY for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations.

(f) *Alternatives.* If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or is an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in such an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

§36.304 Removal of barriers.

(a) *General.* A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) *Examples.* Examples of steps to remove barriers include, but are not limited to, the following actions—

(1) Installing ramps;

(2) Making curb cuts in sidewalks and entrances;

(3) Repositioning shelves;

(4) Rearranging tables, chairs, vending machines, display racks, and other furniture;

(5) Repositioning telephones;

(6) Adding raised markings on elevator control buttons;

(7) Installing flashing alarm lights;

(8) Widening doors;

(9) Installing offset hinges to widen doorways;

(10) Eliminating a turnstile or providing an alternative accessible path;

(11) Installing accessible door hardware;

(12) Installing grab bars in toilet stalls;

(13) Rearranging toilet partitions to increase maneuvering space;

(14) Insulating lavatory pipes under sinks to prevent burns;

(15) Installing a raised toilet seat;

(16) Installing a full-length bathroom mirror;

(17) Repositioning the paper towel dispenser in a bathroom;

(18) Creating designated accessible parking spaces;

(19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;

(20) Removing high pile, low density carpeting; or

(21) Installing vehicle hand controls.

(c) *Priorities.* A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.

(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.

(4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(d) *Relationship to alterations requirements of subpart D of this part.* (1) Except as provided in paragraph (d)(2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in §36.402 and §§36.404–36.406 of this part for the element being altered. The path of travel requirements of §36.403 shall not apply to measures taken solely to comply with the barrier removal requirements of this section.

(2) If, as a result of compliance with the alterations requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with disabilities or others.

(e) *Portable ramps.* Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features such as nonslip surfaces, railings, anchoring, and strength of materials.

(f) *Selling or serving space.* The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

(g) *Limitation on barrier removal obligations.* (1) The requirements for barrier removal under §36.304 shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(2) To the extent that relevant standards for alterations are not provided in subpart D of this part, then the requirements of §36.304 shall not be interpreted to exceed the standards for new construction in subpart D of this part.

(3) This section does not apply to rolling stock and other conveyances to the extent that §36.310 applies to rolling stock and other conveyances.

§36.305 Alternatives to barrier removal.

(a) *General.* Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

(b) *Examples.* Examples of alternatives to barrier removal include, but are not limited to, the following actions—

(1) Providing curb service or home delivery;

(2) Retrieving merchandise from inaccessible shelves or racks;

(3) Relocating activities to accessible locations;

(c) *Multiscreen cinemas.* If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.

§ 36.306 Personal devices and services.

This part does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 36.307 Accessible or special goods.

(a) This part does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.

(b) A public accommodation shall order accessible or special goods at the request of an individual with disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.

(c) Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

§ 36.308 Seating in assembly areas.

(a) *Existing facilities.* (1) To the extent that it is readily achievable, a public accommodation in assembly areas shall—

(i) Provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(ii) Locate the wheelchair seating spaces so that they—

(A) Are dispersed throughout the seating area;

(B) Provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) Adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) Permit individuals who use wheelchairs to sit with family members or other companions.

(2) If removal of seats is not readily achievable, a public accommodation shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(3) The requirements of paragraph (a) of this section shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(b) *New construction and alterations.* The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in subpart D of this part.

§ 36.309 Examinations and courses.

(a) *General.* Any covered entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(b) *Examinations.* (1) Any covered entity offering an examination covered by this section must assure that—

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure);

(ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and

(iii) The examination is administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements are made.

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

(3) A covered entity offering an examination covered by this section shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that covered entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this section may include taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities, transcribers for individuals with manual impairments, and other similar services and actions.

(4) Alternative accessible arrangements may include, for example, provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

(c) *Courses.* (1) Any covered entity that offers a course covered by this section must make such modifications to that course as are necessary to ensure that the place and manner in which the course is given are accessible to individuals with disabilities.

(2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of the manner in which the course is conducted or course materials are distributed.

(3) A covered entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the covered entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print texts or qualified readers for individuals with visual impairments and learning disabilities, classroom equipment adapted for use by individuals with manual impairments, and other similar services and actions.

(4) Courses must be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements must be made.

(5) Alternative accessible arrangements may include, for example, provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

§ 36.310 Transportation provided by public accommodations.

(a) *General.* (1) A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is subject to the general and specific provisions in subparts B, C, and D of this part for its transportation operations, except as provided in this section.

(2) *Examples.* Transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation and customer shuttle bus services operated by covered entities

(b) *Barrier removal.* A public accommodation subject to this section shall remove transportation barriers in existing vehicles and rail passenger cars used for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift) where such removal is readily achievable.

(c) *Requirements for vehicles and systems.* A public accommodation subject to this section shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Board of Directors of the Office of Compliance.

§§ 36.311–36.400 [Reserved]

SUBPART D—NEW CONSTRUCTION AND ALTERATIONS

§ 36.401 New construction.

(a) *General.* (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after July 23, 1997, that are readily accessible to and usable by individuals with disabilities.

(2) For purposes of this section, a facility is designed and constructed for first occupancy after July 23, 1997, only—

(i) If the last application for a building permit or permit extension for the facility is certified to be complete, by an appropriate governmental authority after January 1, 1997 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the appropriate governmental authority after January 1, 1997); and

(ii) If the first certificate of occupancy for the facility is issued after July 23, 1997.

(b) *Place of public accommodation located in private residences.* (1) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by the new construction and alterations requirements of this subpart.

(2) The portion of the residence covered under paragraph (b)(1) of this section extends

to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by employees or visitors of the place of public accommodation, including restrooms.

(c) *Exception for structural impracticability.* (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(d) *Elevator exemption.* (1) For purposes of this paragraph (d)—

Professional office of a health care provider means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the ''professional office of a health care provider'' only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:

(i) A professional office of a health care provider.

(ii) A terminal, depot, or other station used for specified public transportation. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

(3) The elevator exemption set forth in this paragraph (d) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house a professional office of a health care provider, must meet the requirements of this section but for the elevator.

§ 36.402 Alterations.

(a) *General.* (1) Any alteration to a place of public accommodation, after January 1, 1997, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 1, 1997, if the physical alteration of the property begins after that date.

(b) *Alteration.* For the purposes of this part, an alteration is a change to a place of public accommodation that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) *To the maximum extent feasible.* The phrase ''to the maximum extent feasible,'' as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

§ 36.403 Alterations: Path of travel.

(a) *General.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) *Primary function.* A primary function is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other covered entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

(c) *Alterations to an area containing a primary function.* (1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to—

(i) Remodeling merchandise display areas or employee work areas in a department store;

(ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;

(iii) Redesigning the assembly line area of a factory; or

(iv) Installing a computer center in an accounting firm.

(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) *Path of travel.* (1) A ''path of travel'' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term ''path of travel'' also includes the restrooms, telephones, and drinking fountains serving the altered area.

(e) *Disproportionality.* (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(f) *Duty to provide accessible features in the event of disproportionality.* (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom;

(iv) Accessible telephones;

(v) Accessible drinking fountains; and

(vi) When possible, additional accessible elements such as parking, storage, and alarms.

(g) *Series of smaller alterations.* (1) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2)(i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 1, 1997, shall be considered in determining if the cost of providing an accessible path

of travel is disproportionate to the overall cost of the alterations.

§ 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation.

For the purposes of this section, ''professional office of a health care provider'' means a location where a person or entity employed by a covered entity and/or regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a ''professional office of a health care provider'' only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

§ 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

§ 36.406 Standards for new construction and alterations.

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).

(b) The chart in the appendix to this section provides guidance to the user in reading appendix A to this part (ADAAG) together with subparts A through D of this part, when determining requirements for a particular facility.

Appendix to § 36.406

This chart has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

	Subparts A–D	ADAAG
Application: General.	36.102(b)(3): public accommodations 36.102(c): commercial facilities 36.102(e): public entities 36.103 (other laws) 36.401 (''for first occupancy'') 36.402(a)(alterations)	1,2,3,4.1.1.
Definitions	36.104: facility, place of public accommodation, public accommodation, public entity.	3.5 Definitions, including; addition, alteration, building, element, facility, space, story.
	36.401(d)(1)(i), 36.404(a)(1): professional office of a health care provider 36.402: alteration; usability. 36.402(c): to the maximum extent feasible.	4.1.6(i), technical infeasibility.
	36.401(a) General	4.1.2.
New construction: General	36.207 Places of public accommodation in private residences	4.1.3.
Work areas		4.1.1(3)
Structural impracticability	36.401(c)	4.1.1(5)(a).
Elevator exemption	36.401(d) 36.404	4.1.3(5).
Other exceptions		4.1.1(5), 4.1.3(5) and throughout.
Alterations: general	36.402	4.1.6(1).
Alterations affecting an area containing a primary function; path of travel; disproportionality.	36.403	4.1.6(2).
Alterations: Special Technical provisions		4.1.6(3).
Additions	36.401–36.405	4.1.5.
Historic preservation	36.405	4.1.7.
Technical provisions		4.2 through 4.35.
Restaurants and cafeterias		5.
Facilites		6.
Business and mercantile		7.
Libraries		8.
Transient lodging (hotels, homeless shelters, etc.)		9.
Transportation facilities		10.

§ 36.407. Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 1998.

§§ 36.408–36.499 [Reserved]

§§ 36.501–36.608 [Reserved]

Appendix A to Part 36—Standards for Accessible Design

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Appendix B to Part 36—Uniform Federal Accessibility Standards

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Part 37—Transportation Services for Individuals With Disabilities (CAA)

Subpart A—General

Sec.

Subpart B—Applicability

Subpart C—Transportation Facilities

Subpart D—Acquisition of Accessible Vehicles by Public Entities

Subpart E—Acquisition of Accessible Vehicles by Covered Entities

Subpart F—Paratransit as a complement to fixed route service

SUBPART A—GENERAL

§37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of titles II and III of the Americans with Disabilities Act of 1990, as applied by section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 *et seq.*).

§37.3 Definitions

As used in this part:

Accessible means, with respect to vehicles and facilities, complying with the accessibility requirements of parts 37 and 38 of these regulations.

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub.L. 104-1, 109 Stat. 3, 2 U.S.C. §§ 1301-1438).

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131- 12150, 12182, 12183, and 12189) as applied to covered entities by section 210 of the CAA.

Alteration means a change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.

Automated guideway transit system or AGT means a fixed-guideway transit system which operates with automated (driverless) individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to a passenger-activated call button.

Auxiliary aids and services includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open captioning, text telephones (also known as TTYs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

Board means the Board of Directors of the Office of Compliance.

Bus means any of several types of self-propelled vehicles, generally rubber-tired, intended for use on city streets, highways, and busways, including but not limited to minibuses, forty- and thirty- foot buses, articulated buses, double-deck buses, and electrically powered trolley buses, used by public entities to provide designated public transportation service and by covered entities to provide transportation service including, but not limited to, specified public transportation services. Self-propelled, rubber-tired vehicles designed to look like antique or vintage trolleys are considered buses.

Commuter bus service means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

Covered entity means any entity listed in section 210(a) of the CAA that operates a place of public accommodation within the meaning of section 210 of the CAA.

Demand responsive system means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by covered entities, including but not limited to specified public transportation service, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) *The phrase physical or mental impairment* means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The term *physical or mental impairment* includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; or

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities; or

(4) The phrase *is regarded as having such an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or covered entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or covered entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fixed route system means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by covered entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

General Counsel means the General Counsel of the Office of Compliance.

Individual with a disability means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or covered entity acts on the basis of such use.

Light rail means a streetcar-type vehicle operated on city streets, semi-exclusive rights of way, or exclusive rights of way. Service may be provided by step-entry vehicles or by level boarding.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Office means the Office of Compliance.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by a public or covered entity itself or by a person under a contractual or other arrangement or relationship with the entity.

Over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment.

Paratransit means comparable transportation service required by the CAA for individuals with disabilities who are unable to use fixed route transportation systems.

Private entity means any entity other than a public or covered entity.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;
(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;
(3) each joint committee of the Congress;
(4) the Capitol Guide Service;
(5) the Capitol Police;
(6) the Congressional Budget Office;
(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);
(8) the Office of the Attending Physician; and
(9) the Office of Compliance.

Purchase or lease, with respect to vehicles, means the time at which a public or covered entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Rapid rail means a subway-type transit vehicle railway operated on exclusive private rights of way with high level platform stations. Rapid rail also may operate on elevated or at grade level track separated from other traffic.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Service animal means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Station means where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but this term does not include flag stops (i.e., stations which are not regularly scheduled stops but at which trains will stop board or detrain passengers only on signal or advance notice).

Transit facility means, for purposes of determining the number of text telephones needed consistent with §10.3.1(12) of Appendix A to this part, a physical structure the primary function of which is to facilitate access to and from a transportation system which has scheduled stops at the structure. The term does not include an open structure or a physical structure the primary purpose of which is other than providing transportation services.

Used vehicle means a vehicle with prior use.

Vanpool means a voluntary commuter ridesharing arrangement, using vans with a seating capacity greater than 7 persons (including the driver) or buses, which provides transportation to a group of individuals traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

Vehicle, as the term is applied to covered entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 or title III of the Americans With Disabilities Act, which is not applied to covered entities by section 210 of the CAA.

Wheelchair means a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. A ''*common wheelchair*'' is such a device which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied.

§37.5 Nondiscrimination.

(a) No covered entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

(b) Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.

(c) An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats.

(d) An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

(e) An entity shall not require that an individual with disabilities be accompanied by an attendant.

(f) An entity shall not refuse to serve an individual with a disability or require anything contrary to this part because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to this part.

(g) It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

§37.7 Standards for accessible vehicles.

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in part 38 of these regulations.

(b)(1) For purposes of implementing the equivalent facilitation provision in §38.2 of these regulations, the following parties may submit to the General Counsel of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or covered entity that provides transportation services and is subject to the provisions of subpart D or subpart E of this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of part 38 of these regulations concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved];

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to the General Counsel. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a covered entity that provides transportation services subject to the provisions of subpart E of this part, the covered entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the General Counsel of the concerned operating administration on a case-by-case basis.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitation in situations other than those to which the determination is made. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Office.

(c) Over-the-road buses acquired by public entities (or by a contractor to a public entity as provided in §37.23 of this part) shall comply with §38.23 and subpart G of part 38 of these regulations.

§37.9 Standards for accessible transportation facilities.

(a) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in Appendix A to this part.

(b) Facility alterations begun before January 1, 1997, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §37.47 of this part, even if these alterations are not consistent with the standards set forth in Appendix A to this part, if the modifications complied with the Uniform Federal Accessibility Standard (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that

provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(c) Public entities shall ensure the construction of new bus stop pads are in compliance with section 10.2.1(1) of appendix A to this part, to the extent construction specifications are within their control.

(d)(1) For purposes of implementing the equivalent facilitation provision in section 2.2 of appendix A to this part, the following parties may submit to the General Counsel a request for a determination of equivalent facilitation:

(i) A public or covered entity that provides transportation services subject to the provisions of subpart C of this part, or any other appropriate party with the concurrence of the General Counsel.

(ii) The manufacturer of a product or accessibility feature to be used in the facility of such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of appendix A to part 37 of these regulations concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved];

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to the General Counsel. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate medial, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a covered entity, the covered entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the General Counsel on a case-by-case basis.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determination is made. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Office.

§37.11 [Reserved]

§37.13 Effective date for certain vehicle lift specifications.

The vehicle lift specifications identified in §§38.23(b)(6) and 38.83(b)(6) apply to solicitations for vehicles under this part after December 31, 1996.

§§37.15 Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 3.29.6 of appendix A to this part are suspended temporarily until July 26, 1998.

§§37.17–37.19 [Reserved]

SUBPART B—APPLICABILITY

§37.21 Applicability: General.

(a) This part applies to the following entities:

(1) Any public entity that provides designated public transportation; and

(2) Any covered entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system.

(b) Entities to which this part applies also may be subject to CAA regulations of the Office of Compliance (parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Office of Compliance regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§37.23 Service under contract.

(a) When a public entity enters into a contractual or other arrangement or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A public entity which enters into a contractual or other arrangement or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

§37.25 [Reserved]

§37.27 Transportation for elementary and secondary education systems.

(a) The requirements of this part do not apply to public school transportation.

(b) The requirements of this part do not apply to the transportation of school children to and from a covered elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in §37.105. If the school does not meet the criteria of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this part for covered entities not primarily engaged in transporting people.

§37.29 [Reserved]

§37.31 Vanpools.

Vanpool systems which are operated by public entities, or in which public entities own or purchase or lease the vehicles, are subject to the requirements of this part for demand responsive service for the general public operated by public entities. A vanpool system in this category is deemed to be providing equivalent service to individuals with disabilities if a vehicle that an individual with disabilities can use is made available to and used by a vanpool in which such an individual chooses to participate.

§§37.33–37.35 [Reserved]

§37.37 Other applications.

(a) Shuttle systems and other transportation services operated by public accommodations are subject to the requirements of this part for covered entities not primarily engaged in the business of transporting people. Either the requirements for demand responsive or fixed route service may apply, depending upon the characteristics of each individual system of transportation.

(b) Conveyances used by members of the public primarily for recreational purposes rather than for transportation (e.g., amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings) are not subject to the requirements of this part. Such conveyances are subject to the Board's regulations implementing the non-transportation provisions of title II or title III of the ADA, as applied by section 210 of the CAA, as applicable.

(c) Transportation services provided by an employer solely for its own employees are not subject to the requirements of this part. Such services are subject to the requirements of section 201 of the CAA .

§37.39 [Reserved]

SUBPART C—TRANSPORTATION FACILITIES

§37.41 Construction of transportation facilities by public entities.

A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this section, a facility or station is 'new' if its construction begins (i.e., issuance of notice to proceed) after December 31, 1996.

§37.43 Alteration of transportation facilities by public entity.

(a)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. *Provided*, that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(3) The requirements of this paragraph also apply to the alteration of existing intercity or commuter rail stations by the responsible person for, owner of, or person in control of the station.

(4) The requirements of this section apply to any alteration which begins (i.e., issuance of notice to proceed or work order, as applicable) after December 31, 1996.

(b) As used in this section, the phrase *to the maximum extent feasible* applies to the occasional case where the nature of an existing

facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the entity shall provide the maximum physical accessibility feasible. Any altered features of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

(c) As used in this section, a *primary function* is a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, passenger waiting areas, train or bus platforms, baggage checking and return areas and employment areas (except those involving non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, vary narrow passageways, or freight [non-passenger] elevators which are frequented only by repair personnel).

(d) As used in this section, a *path of travel* includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(e)(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

(2) Costs that may be counted as expenditures required to provide an accessible path of travel include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);

(ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);

(iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TTYs);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(f)(1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then such areas shall be made accessible to the maximum extent without resulting in disproportionate costs;

(2) In this situation, the public entity should give priority to accessible elements that will provide the greatest access, in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);

(iv) Accessible telephones;

(v) Accessible drinking fountains;

(vi) When possible, other accessible elements (e.g., parking, storage, alarms).

(g) If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(h)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate;

(2) For the first three years after January 1, 1997, only alterations undertaken between that date and the date of the alteration at issue shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alteration.

(3) Only alterations undertaken after January 1, 1997, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alteration.

§37.45 Construction and alteration of transportation facilities by covered entities.

In constructing and altering transit facilities, covered entities shall comply with the regulations of the Board implementing title III of the ADA, as applied by section 210 of the CAA (part 36).

§37.47 Key stations in light and rapid rail systems.

(a) Each public entity that provides designated public transportation by means of a light or rapid rail system shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in §37.43 of this part.

(b) Each public entity shall determine which stations on its system are key stations. The entity shall identify key stations, using the planning and public participation process set forth in paragraph (d) of this section, and taking into consideration the following criteria:

(1) Stations where passenger boardings exceed average station passenger boardings on the rail system by at least fifteen percent, unless such a station is close to another accessible station;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as practicable, but in no case later than January 1, 2000, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until January 1, 2001.

(2) The General Counsel may grant an extension of this completion date for key station accessibility for a period up to January 1, 2025, provided that two-thirds of key stations are made accessible by January 1, 2015. Extensions may be granted as provided in paragraph (e) of this section.

(d) The public entity shall develop a plan for compliance for this section. The plan shall be submitted to the General Counsel's office by July 1, 1997.

(1) The public entity shall consult with individuals with disabilities affected by the plan. The public entity also shall hold at least one public hearing on the plan and solicit comments on it. The plan submitted to General Counsel shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan also shall summarize the public entity's responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations, consistent with the requirements of this section.

(e) A public entity wishing to apply for an extension of the January 1, 2000, deadline for key station accessibility shall include a request for an extension with its plan submitted to the General Counsel under paragraph (d) of this section. Extensions may be granted only with respect to key stations which need extraordinarily expensive structural changes to, or replacement of, existing facilities (e.g., installations of elevators, raising the entire passenger platform, or alterations of similar magnitude and cost). Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The General Counsel may approve, approve with conditions, modify, or disapprove any request for an extension.

§§37.49–37.59 [Reserved]

§37.61 Public transportation programs and activities in existing facilities.

(a) A public entity shall operate a designated public transportation program or activity conducted in an existing facility so that, when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(b) This section does not require a public entity to make structural changes to existing facilities in order to make the facilities accessible by individuals who use wheelchairs, unless and to the extent required by §37.43 (with respect to alterations) or §37.47 of this part (with respect to key stations). Entities shall comply with other applicable accessibility requirements for such facilities.

(c) Public entities, with respect to facilities that, as provided in paragraph (b) of this section, are not required to be made accessible to individuals who use wheelchairs, are not required to provide to such individuals services made available to the general public at such facilities when the individuals could not utilize or benefit from the services.

§§37.63–37.69 [Reserved]

SUBPART D—ACQUISITION OF ACCESSIBLE VEHICLES BY PUBLIC ENTITIES.

§37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system making a solicitation after January 31, 1997, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it applies for, and the General Counsel grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The General Counsel may grant a request for such a waiver if the public entity demonstrates to the General Counsel's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses equipped with such necessary lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied, copies of advertisements in trade publications and inquiries to trade associations seeking lifts, and documentation of the public hearing.

(f) Any waiver granted by the General Counsel under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as soon as one becomes available;

(4) Such other terms and conditions as the General Counsel may impose.

(g)(1) When the General Counsel grants a waiver under this section, he/she shall promptly notify any appropriate committees of Congress.

(2) If the General Counsel has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the General Counsel shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§37.73 Purchase or lease of used non-rail vehicles by public entities operating a fixed route system.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after January 31, 1997, a used bus or other used vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so stating;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the General Counsel and the public.

§37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

(1) After January 31, 1997, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after January 31, 1997, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the General Counsel for a determination of the historic character of the vehicle. The General Counsel shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after January 31, 1997, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions or priorities based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability.

(d) A public entity, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, make a certificate that it provides equivalent service meeting the standards of paragraph (c) of this section. A public entity shall make such a certificate and retain it in its files, subject to inspection on request of the General Counsel. All certificates under this paragraph may be made in connection with a particular procurement or in advance of a procurement; however, no certificate shall be valid for more than one year.

(e) The waiver mechanism set forth in §37.71(b)–(g) (unavailability of lifts) of this subpart shall also be available to public entities operating a demand responsive system for the general public.

§37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.

Each public entity operating a rapid or light rail system making a solicitation after January 31, 1997, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after January 31, 1997, purchases or leases a used rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) The initial solicitation for used vehicles made by the public entity specifying that all

used vehicles were to be accessible to and usable by individuals with disabilities, or, if a solicitation is not used, a documented communication so stating;

(2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the General Counsel and the public.

§37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After January 31, 1997, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after January 31, 1997, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the General Counsel for a determination of the historic character of the vehicle. The General Counsel shall refer such requests to the National Register of Historic Places and shall rely on its advice in making a determination of the historic character of the vehicle.

§§37.85–37.91 [Reserved]

§37.93 One car per train rule.

(a) The definition of accessible for purposes of meeting the one car per train rule is spelled out in the applicable subpart for each transportation system type in part 38 of these regulations.

(b) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than December 31, 2001.

§37.95 [Reserved]

§§37.97–37.99 [Reserved]

SUBPART E—ACQUISITION OF ACCESSIBLE VEHICLES BY COVERED ENTITIES

§37.101 Purchase or lease of vehicles by covered entities not primarily engaged in the business of transporting people.

(a) *Application.* This section applies to all purchases or leases of vehicles by covered entities which are not primarily engaged in the business of transporting people, in which a solicitation for the vehicle is made after January 31, 1997.

(b) *Fixed Route System, Vehicle Capacity Over 16.* If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Fixed Route System, Vehicle Capacity of 16 or Fewer.* If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of 16 or fewer passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of §37.105 of this part.

(d) *Demand Responsive System, Vehicle Capacity Over 16.* If the entity operates a demand responsive system, and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of §37.105 of this part.

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer.* Entities providing demand responsive transportation covered under this section are not specifically required to ensure that new vehicles with seating capacity of 16 or fewer are accessible to individuals with wheelchairs. These entities are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of §§37.171 and 37.105, regardless of whether or not the entities purchase a new vehicle.

§37.103 [Reserved]

§37.105 Equivalent service standard.

For purposes of § 37.101 of this part, a fixed route system or demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(a) (1) Schedules/headways (if the system is fixed route);

(2) Response time (if the system is demand responsive);

(b) Fares;

(c) Geographic area of service;

(d) Hours and days of service;

(e) Availability of information;

(f) Reservations capability (if the system is demand responsive);

(g) Any constraints on capacity or service availability;

(h) Restrictions priorities based on trip purpose (if the system is demand responsive).

§§37.107–37.109 [Reserved]

§§37.111–37.119 [Reserved]

SUBPART F—PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE

§37.121 Requirement for comparable complementary paratransit service.

(a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

(b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123–37.133 of this subpart. The requirement to comply with §37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.

(c) Requirements for complementary paratransit do not apply to commuter bus systems.

§37.123 CAA paratransit eligibility—standards.

(a) Public entities required by §37.121 of this subpart to provide complementary paratransit service shall provide the service to the CAA paratransit eligible individuals described in paragraph (e) of this section.

(b) If an individual meets the eligibility criteria of this section with respect to some trips but not others, the individual shall be CAA paratransit eligible only for those trips for which he or she meets the criteria.

(c) Individuals may be CAA paratransit eligible on the basis of a permanent or temporary disability.

(d) Public entities may provide complementary paratransit service to persons other than CAA paratransit eligible individuals. However, only the cost of service to CAA paratransit eligible individuals may be considered in a public entity's request for an undue financial burden waiver under §§37.151–37.155 of this part.

(e) The following individuals are CAA paratransit eligible:

(1) Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities.

(2) Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.

(i) An individual is eligible under this paragraph with respect to travel on an otherwise accessible route on which the boarding or disembarking location which the individual would use is one at which boarding or disembarking from the vehicle is precluded as provided in § 37.167(g) of this part.

(ii) An individual using a common wheelchair is eligible under this paragraph if the individual's wheelchair cannot be accommodated on an existing vehicle (e.g., because the vehicle's lift does not meet the standards of part 38 of these regulations), even if that vehicle is accessible to other individuals with disabilities and their mobility wheelchairs.

(iii) With respect to rail systems, an individual is eligible under this paragraph if the

individual could use an accessible rail system, but

(A) there is not yet one accessible car per train on the system; or

(B) key stations have not yet been made accessible.

(3) Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

(i) Only a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location is a basis for eligibility under this paragraph. A condition which makes traveling to boarding location or from a disembarking location more difficult for a person with a specific impairment-related condition than for an individual who does not have the condition, but does not prevent the travel, is not a basis for eligibility under this paragraph.

(ii) Architectural barriers not under the control of the public entity providing fixed route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph, if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location.

(f) Individuals accompanying a CAA paratransit eligible individual shall be provided service as follows:

(1) One other individual accompanying the CAA paratransit eligible individual shall be provided service.

(i) If the CAA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual.

(ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;

(2) Additional individuals accompanying the CAA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the CAA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to CAA paratransit eligible individuals.

(3) In order to be considered as ''accompanying'' the eligible individual for purposes of this paragraph, the other individual(s) shall have the same origin and destination as the eligible individual.

§37.125 CAA paratransit eligibility: process.

Each public entity required to provide complementary paratransit service by § 37.121 of this part shall establish a process for determining CAA paratransit eligibility.

(a) The process shall strictly limit CAA paratransit eligibility to individuals specified in §37.123 of this part.

(b) All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.

(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.

(e) The public entity shall provide documentation to each eligible individual stating that he or she is ''CAA Paratransit Eligible.'' The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.

(f) The entity may require recertification of the eligibility of CAA paratransit eligible individuals at reasonable intervals.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it;

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

(h) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to CAA eligible individuals who establish a pattern or practice of missing scheduled trips.

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.

(2) Before suspending service, the entity shall take the following steps:

(i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction;

(ii) Provide the individual an opportunity to be heard and to present information and arguments;

(iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

(i) In applications for CAA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

§37.127 Complementary paratransit service for visitors.

(a) Each public entity required to provide complementary paratransit service under § 37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are CAA paratransit eligible, under the criteria of § 37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

§37.129 Types of service.

(a) Except as provided in this section, complementary paratransit service for CAA paratransit eligible persons shall be origin-to-destination service.

(b) Complementary paratransit service for CAA paratransit eligible persons described in §37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.

(c) Complementary paratransit service for CAA eligible persons described in §37.123 (e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

§37.131 Service criteria for complementary paratransit.

The following service criteria apply to complementary paratransit required by §37.121 of this part.

(a) *Service Area*—(1) Bus. (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one-half miles on each side of a fixed route, based on local circumstances.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) *Rail.* (i) For rail systems, the service area shall consist of a circle with a radius of a mile around each station.

(ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1½ miles as part of its service area, based on local circumstances.

(3) *Jurisdictional Boundaries.* Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all

practicable steps to provide paratransit service to any part of its service area.

(b) *Response Time.* The entity shall schedule and provide paratransit service to any CAA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.

(2) The entity may negotiate pickup times with the individual, but the entity shall not require a CAA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of a CAA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of §37.131(b) and (c).

(c) *Fares.* The fare for a trip charged to a CAA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.

(2) The fares for individuals accompanying CAA paratransit eligible individuals, who are provided service under §37.123 (f) of this part, shall be the same as for the CAA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).

(d) *Trip Purpose Restrictions.* The entity shall not impose restrictions or priorities based on trip purpose.

(e) *Hours and Days of Service.* The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

(f) *Capacity Constraints.* The entity shall not limit the availability of complementary paratransit service to CAA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to CAA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

(g) *Additional Service.* Public entities may provide complementary paratransit service to CAA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under §§37.151–37.155 of this part.

§37.133 Subscription Service.

(a) This part does not prohibit the use of subscription service by public entities as part of a complementary paratransit system, subject to the limitations in this section.

(b) Subscription service may not absorb more than fifty percent of the number of trips available at a given time of day, unless there is excess non-subscription capacity.

(c) Notwithstanding any other provision of this part, the entity may establish waiting lists or other capacity constraints and trip purpose restrictions or priorities for participation in the subscription service only.

§37.135 Submission of paratransit plan.

(a) *General.* Each public entity operating fixed route transportation service, which is required by §37.121 to provide complementary paratransit service, shall develop a paratransit plan.

(b) *Initial Submission.* Except as provided in §37.141 of this part, each entity shall submit its initial plan for compliance with the complementary paratransit service provision by June 1, 1998, to the appropriate location identified in paragraph (f) of this section.

(c) *Annual Updates.* Except as provided in this paragraph, each entity shall submit its annual update to the plan on June 1 of each succeeding year.

(1) If an entity has met and is continuing to meet all requirements for complementary paratransit in §§37.121–37.133 of this part, the entity may submit to the General Counsel an annual certification of continued compliance in lieu of a plan update. Entities that have submitted a joint plan under §37.141 may submit a joint certification under this paragraph. The requirements of §§37.137(a) and (b), 37.138 and 37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of continued compliance falling short of compliance with §§37.121–37.133, the entity shall immediately notify the General Counsel in writing of the problem. In this case, the entity shall also file a plan update meeting the requirements of §§37.137–37.139 of this part on the next following June 1 and in each succeeding year until the entity returns to full compliance.

(3) An entity that has demonstrated undue financial burden to the General Counsel shall file a plan update meeting the requirements of §§37.137–37.139 of this part on each June 1 until full compliance with §§37.121–37.133 is attained.

(4) If the General Counsel reasonably believes that an entity may not be fully complying with all service criteria, the General Counsel may require the entity to provide an annual update to its plan.

(d) *Phase-in of Implementation.* Each plan shall provide for full compliance by no later than June 1, 2003, unless the entity has received a waiver based on undue financial burden. If the date for full compliance specified in the plan is after June 1, 1999, the plan shall include milestones, providing for measured, proportional progress toward full compliance.

(e) *Plan Implementation.* Each entity shall begin implementation of its plan on June 1, 1998.

(f) *Submission Locations.* An entity shall submit its plan to the General Counsel's office.

§37.137 Paratransit plan development.

(a) *Survey of existing services.* Each submitting entity shall survey the area to be covered by the plan to identify any person or entity (public or covered) which provides a paratransit or other special transportation service for CAA paratransit eligible individuals in the service area to which the plan applies.

(b) *Public participation.*

Each submitting entity shall ensure public participation in the development of its paratransit plan, including at least the following:

(1) *Outreach.* Each submitting entity shall solicit participation in the development of its plan by the widest range of persons anticipated to use its paratransit service. Each entity shall develop contacts, mailing lists and other appropriate means for notification of opportunities to participate in the development of the paratransit plan.

(2) *Consultation with individuals with disabilities.* Each entity shall contact individuals with disabilities and groups representing them in the community. Consultation shall begin at an early stage in the plan development and should involve persons with disabilities in all phases of plan development. All documents and other information concerning the planning procedure and the provision of service shall be available, upon request, to members of the pubic, except where disclosure would be an unwarranted invasion of personal privacy.

(3) *Opportunity for public comment.* The submitting entity shall make its plan available for review before the plan is finalized. In making the plan available for public review, the entity shall ensure that the plan is available upon request in accessible formats.

(4) *Public hearing.* The entity shall sponsor at a minimum one public hearing and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements; and

(5) *Special requirements.* If the entity intends to phase-in its paratransit service over a multi-year period, or request a waiver based on undue financial burden, the public hearing shall afford the opportunity for interested citizens to express their views concerning the phase-in, the request, and which service criteria may be delayed in implementation.

(c) *Ongoing requirement.* The entity shall create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities. This includes, but is not limited to, the development of the initial plan, any request for an undue financial burden waiver, and each annual submission.

§37.139 Plan contents.

Each plan shall contain the following information:

(a) Identification of the entity or entities submitting the plan, specifying for each

(1) Name and address; and

(2) Contact person for the plan, with telephone number and facsimile telephone number (FAX), if applicable.

(b) A description of the fixed route system as of January 1, 1997 (or subsequent year for annual updates), including—

(1) A description of the service area, route structure, days and hours of service, fare structure, and population served. This includes maps and tables, if appropriate;

(2) The total number of vehicles (bus, van, or rail) operated in fixed route service (including contracted service), and percentage of accessible vehicles and percentage of routes accessible to and usable by persons with disabilities, including persons who use wheelchairs;

(3) Any other information about the fixed route service that is relevant to establishing the basis for comparability of fixed route and paratransit service.

(c) A description of existing paratransit services, including:

(1) An inventory of service provided by the public entity submitting the plan;

(2) An inventory of service provided by other agencies or organizations, which may in whole or in part be used to meet the requirement for complementary paratransit service; and

(3) A description of the available paratransit services in paragraphs (c)(2) and (c)(3) of this section as they relate to the service criteria described in §37.131 of this part of service area, response time, fares, restrictions on trip purpose, hours and days of service, and capacity constraints; and to the requirements of CAA paratransit eligibility.

(d) A description of the plan to provide comparable paratransit, including:

(1) An estimate of demand for comparable paratransit service by CAA eligible individuals and a brief description of the demand estimation methodology used;

(2) An analysis of differences between the paratransit service currently provided and what is required under this part by the entity(ies) submitting the plan and other entities, as described in paragraph (c) of this section;

(3) A brief description of planned modifications to existing paratransit and fixed route service and the new paratransit service planned to comply with the CAA paratransit service criteria;

(4) A description of the planned comparable paratransit service as it relates to each of the service criteria described in § 37.131 of this part-service area, absence of restrictions or priorities based on trip purpose, response time, fares, hours and days of service, and lack of capacity constraints. If the paratransit plan is to be phased in, this paragraph shall be coordinated with the information being provided in paragraphs (d)(5) and (d)(6) of this paragraph;

(5) A timetable for implementing comparable paratransit service, with a specific date indicating when the planned service will be completely operational. In no case may full implementation be completed later than June 1, 2003. The plan shall include milestones for implementing phases of the plan, with progress that can be objectively measured yearly;

(6) A budget for comparable paratransit service, including capital and operating expenditures over five years.

(e) A description of the process used to certify individuals with disabilities as CAA paratransit eligible. At a minimum, this must include—

(1) A description of the application and certification process, including—

(i) The availability of information about the process and application materials in accessible formats;

(ii) The process for determining eligibility according to the provisions of §§37.123–37.125 of this part and notifying individuals of the determination made;

(iii) The entity's system and timetable for processing applications and allowing presumptive eligibility; and

(iv) The documentation given to eligible individuals.

(2) A description of the administrative appeals process for individuals denied eligibility.

(3) A policy for visitors, consistent with §37.127 of this part.

(f) Description of the public participation process including—

(1) Notice given of opportunity for public comment, the date(s) of completed public hearing(s), availability of the plan in accessible formats, outreach efforts, and consultation with persons with disabilities.

(2) A summary of significant issues raised during the public comment period, along with a response to significant comments and discussion of how the issues were resolved.

(g) Efforts to coordinate service with other entities subject to the complementary paratransit requirements of this part which have overlapping or contiguous service areas or jurisdictions.

(h) The following endorsements or certifications:

(1) a resolution adopted by the entity authorizing the plan, as submitted. If more than one entity is submitting the plan there must be an authorizing resolution from each board. If the entity does not function with a board, a statement shall be submitted by the entity's chief executive;

(2) a certification that the survey of existing paratransit service was conducted as required in § 37.137(a) of this part;

(3) To the extent service provided by other entities is included in the entity's plan for comparable paratransit service, the entity must certify that:

(i) CAA paratransit eligible individuals have access to the service;

(ii) The service is provided in the manner represented; and

(iii) Efforts will be made to coordinate the provision of paratransit service by other providers.

(i) a request for a waiver based on undue financial burden, if applicable. The waiver request should include information sufficient for the General Counsel to consider the factors in § 37.155 of this part. If a request for an undue financial burden waiver is made, the plan must include a description of additional paratransit services that would be provided to achieve full compliance with the requirement for comparable paratransit in the event the waiver is not granted, and the timetable for the implementation of these additional services.

(j) *Annual plan updates.* (1) The annual plan updates submitted June 1, 1999, and annually thereafter, shall include information necessary to update the information requirements of this section. Information submitted annually must include all significant changes and revisions to the timetable for implementation;

(2) If the paratransit service is being phased in over more than one year, the entity must demonstrate that the milestones identified in the current paratransit plans have been achieved. If the milestones have not been achieved, the plan must explain any slippage and what actions are being taken to compensate for the slippage.

(3) The annual plan must describe specifically the means used to comply with the public participation requirements, as described in § 37.137 of this part.

§37.141 Requirements for a joint paratransit plan.

(a) Two or more public entities with overlapping or contiguous service areas or jurisdictions may develop and submit a joint plan providing for coordinated paratransit service. Joint plans shall identify the participating entities and indicate their commitment to participate in the plan.

(b) To the maximum extent feasible, all elements of the coordinated plan shall be submitted on June 1, 1998. If a coordinated plan is not completed by June 1, 1998, those entities intending to coordinate paratransit service must submit a general statement declaring their intention to provide coordinated service and each element of the plan specified in § 37.139 to the extent practicable. In addition, the plan must include the following certifications from each entity involved in the coordination effort:

(1) a certification that the entity is committed to providing CAA paratransit service as part of a coordinated plan.

(2) a certification from each public entity participating in the plan that it will maintain current levels of paratransit service until the coordinated plan goes into effect.

(c) Entities submitting the above certifications and plan elements in lieu of a completed plan on June 1, 1998, must submit a complete plan by December 1, 1998.

(d) Filing of an individual plan does not preclude an entity from cooperating with other entities in the development or implementation of a joint plan. An entity wishing to join with other entities after its initial submission may do so by meeting the filing requirements of this section.

§37.143 Paratransit plan implementation.

(a) Each entity shall begin implementation of its complementary paratransit plan, pending notice from the General Counsel. The implementation of the plan shall be consistent with the terms of the plan, including any specified phase-in period.

(b) If the plan contains a request for a waiver based on undue financial burden, the entity shall begin implementation of its plan, pending a determination on its waiver request.

§37.145 [Reserved]

§37.147 Considerations during General Counsel review.

In reviewing each plan, at a minimum the General Counsel will consider the following:

(a) Whether the plan was filed on time;

(b) Comments submitted by the state, if applicable;

(c) Whether the plan contains responsive elements for each component required under § 37.139 of this part;

(d) Whether the plan, when viewed in its entirety, provides for paratransit service comparable to the entity's fixed route service;

(e) Whether the entity complied with the public participation efforts required by this part; and

(f) The extent to which efforts were made to coordinate with other public entities with overlapping or contiguous service areas or jurisdictions.

§37.149 Disapproved plans.

(a) If a plan is disapproved in whole or in part, the General Counsel will specify which provisions are disapproved. Each entity shall amend its plan consistent with this information and resubmit the plan to the General Counsel's office within 90 days of receipt of the disapproval letter.

(b) Each entity revising its plan shall continue to comply with the public participation requirements applicable to the initial development of the plan (set out in §37.137 of this part).

§37.151 Waiver for undue financial burden.

If compliance with the service criteria of §37.131 of this part creates an undue financial burden, an entity may request a waiver from all or some of the provisions if the entity has complied with the public participation requirements in §37.137 of this part and if the following conditions apply:

(a) At the time of submission of the initial plan on June 1, 1998

(1) The entity determines that it cannot meet all of the service criteria by June 1, 2003; or

(2) The entity determines that it cannot make measured progress toward compliance in any year before full compliance is required. For purposes of this part, measured progress means implementing milestones as scheduled, such as incorporating an additional paratransit service criterion or improving an aspect of a specific service criterion.

(b) At the time of its annual plan update submission, if the entity believes that circumstances have changed since its last submission, and it is no longer able to comply by June 1, 2003, or make measured progress in any year before 2003, as described in paragraph (a)(2) of this section.

§37.153 General Counsel waiver determination.

(a) The General Counsel will determine whether to grant a waiver for undue financial burden on a case-by-case basis, after considering the factors identified in §37.155 of this part and the information accompanying the request. If necessary, the General Counsel will return the application with a request for additional information.

(b) Any waiver granted will be for a limited and specified period of time. (c) If the General Counsel grants the applicant a waiver, the General Counsel will do one of the following:

(1) Require the public entity to provide complementary paratransit to the extent it can do so without incurring an undue financial burden. The entity shall make changes in its plan that the General Counsel determines are appropriate to maximize the complementary paratransit service that is provided to CAA paratransit eligible individuals. When making changes to its plan, the entity shall use the public participation process specified for plan development and shall consider first a reduction in number of trips provided to each CAA paratransit eligible person per month, while attempting to meet all other service criteria.

(2) Require the public entity to provide basic complementary paratransit services to all CAA paratransit eligible individuals, even if doing so would cause the public entity to incur an undue financial burden. Basic complementary paratransit service shall include at least complementary paratransit service in corridors defined as provided in § 37.131(a) along the public entity's key routes during core service hours.

(i) For purposes of this section, key routes are defined as routes along which there is service at least hourly throughout the day.

(ii) For purposes of this section, core service hours encompass at least peak periods, as these periods are defined locally for fixed route service, consistent with industry practice.

(3) If the General Counsel determines that the public entity will incur an undue financial burden as the result of providing basic complementary paratransit service, such that it is infeasible for the entity to provide basic complementary paratransit service, the Administrator shall require the public entity to coordinate with other available providers of demand responsive service in the area served by the public entity to maximize the service to CAA paratransit eligible individuals to the maximum extent feasible.

§37.155 Factors in decision to grant an undue financial burden waiver.

(a) In making an undue financial burden determination, the General Counsel will consider the following factors:

(1) Effects on current fixed route service, including reallocation of accessible fixed route vehicles and potential reduction in service, measured by service miles;

(2) Average number of trips made by the entity's general population, on a per capita basis, compared with the average number of trips to be made by registered CAA paratransit eligible persons, on a per capita basis;

(3) Reductions in other services, including other special services;

(4) Increases in fares;

(5) Resources available to implement complementary paratransit service over the period covered by the plan;

(6) Percentage of budget needed to implement the plan, both as a percentage of operating budget and a percentage of entire budget;

(7) The current level of accessible service, both fixed route and paratransit;

(8) Cooperation/coordination among area transportation providers;

(9) Evidence of increased efficiencies, that have been or could be effectuated, that would benefit the level and quality of available resources for complementary paratransit service; and

(10) Unique circumstances in the submitting entity's area that affect the ability of the entity to provide paratransit, that militate against the need to provide paratransit, or in some other respect create a circumstance considered exceptional by the submitting entity.

(b)(1) Costs attributable to complementary paratransit shall be limited to costs of providing service specifically required by this part to CAA paratransit eligible individuals, by entities responsible under this part for providing such service.

(2) If the entity determines that it is impracticable to distinguish between trips mandated by the CAA and other trips on a trip-by-trip basis, the entity shall attribute to CAA complementary paratransit requirements a percentage of its overall paratransit costs. This percentage shall be determined by a statistically valid methodology that determines the percentage of trips that are required by this part. The entity shall submit information concerning its methodology and the data on which its percentage is based with its request for a waiver. Only costs attributable to CAA-mandated trips may be considered with respect to a request for an undue financial burden waiver.

(3) Funds to which the entity would be legally entitled, but which, as a matter of state or local funding arrangements, are provided to another entity and used by that entity to provide paratransit service which is part of a coordinated system of paratransit meeting the requirements of this part, may be counted in determining the burden associated with the waiver request.

SUBPART G—PROVISION OF SERVICE

§37.161 Maintenance of accessible features: general.

(a) Public and covered entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§37.163 Keeping vehicle lifts in operative condition: public entities.

(a) This section applies only to public entities with respect to lifts in non-rail vehicles.

(b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

§37.165 Lift and securement use.

(a) This section applies to public and covered entities.

(b) All common wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.

(c)(1) For vehicles complying with part 38 of these regulations, the entity shall use the securement system to secure wheelchairs as provided in that part.

(2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.

(3) The entity may require that an individual permit his or her wheelchair to be secured.

(d) The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.

(e) The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.

(f) Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. Provided that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

§37.167 Other service requirements

(a) This section applies to public and covered entities.

(b) On fixed route systems, the entity shall announce stops as follows:

(1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.

(2) The entity shall announce any stop on request of an individual with a disability.

(c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.

(d) The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.

(e) The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by part 38 of these regulations.

(f) The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.

(g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials.

(i) The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following person to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail and rapid rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons or persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons siting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

§37.169 Interim requirements for over-the-road bus service operated by covered entities.

(a) Covered entities operating over-the-road buses, in addition to compliance with other applicable provisions of this part, shall provide accessible service as provided in this section.

(b) The covered entity shall provide assistance, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the bus seat for the purpose of boarding and disembarking. The covered entity shall ensure that personnel are trained to provide this assistance safely and appropriately.

(c) To the extent that they can be accommodated in the areas of the passenger compartment provided for passengers' personal effects, wheelchairs or other mobility aids and assistive devices used by individuals with disabilities, or components of such devices, shall be permitted in the passenger compartment. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with disabilities with the stowage and retrieval of mobility aids, assistive devices, or other items that can be accommodated in the passenger compartment of the bus.

(d) Wheelchairs and other mobility aids or assistive devices that cannot be accommodated in the passenger compartment (including electric wheelchairs) shall be accommodated in the baggage compartment of the bus, unless the size of the baggage compartment prevents such accommodation.

(e) At any given stop, individuals with disabilities shall have the opportunity to have their wheelchairs or other mobility aids or assistive devices stowed in the baggage compartment before other baggage or cargo is loaded, but baggage or cargo already on the bus does not have to be off-loaded in order to make room for such devices.

(f) The entity may require up to 48 hours' advance notice only for providing boarding assistance. If the individual does not provide such notice, the entity shall nonetheless provide the service if it can do so by making a reasonable effort, without delaying the bus service.

§37.171 Equivalency requirement for demand responsive service operated by covered entities not primarily engaged in the business of transporting people.

A covered entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it does to individuals without disabilities. The standards of §37.105 shall be used to determine if the entity is providing equivalent service.

§37.173 Training.

Each public or covered entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among individuals with disabilities.

Appendix A to Part 37—Standards for Accessible Transportation Facilities

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Appendix B to Part 37—Certifications

Certification of Equivalent Service

The (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;

(2) Fares;

(3) Geographic service area;

(4) Hours and days of service;

(5) Restrictions on trip purpose;

(6) Availability of information and reservation capability; and

(7) Constraints on capacity or service availability.

This certification is valid for no longer than one year from its date of filing.

_____

signature

_____

name of authorized official

_____

title

_____

date

Existing Paratransit Service Survey

This is to certify that (name of public entity (ies)) has conducted a survey of existing paratransit services as required by section 37.137 (a) of the CAA regulations.

_____

signature

_____

name of authorized official

_____

title

_____

date

Included Service Certification

This is to certify that service provided by other entities but included in the CAA paratransit plan submitted by (name of submitting entity (ies)) meets the requirements of part 37, subpart F of the CAA regulations providing that CAA eligible individuals have access to the service; the service is provided in the manner represented; and, that efforts will be made to coordinate the provision of paratransit service offered by other providers.

_____

signature

_____

name of authorized official

_____

title

_____

date

Joint Plan Certification I

This is to certify that (name of entity covered by joint plan) is committed to providing CAA paratransit service as part of this coordinated plan and in conformance with the requirements of part 37 subpart F of the CAA regulations.

_____

signature

_____

name of authorized official

_____

title

_____

date

Joint Plan Certification II

This is to certify that (name of entity covered by joint plan) will, in accordance with section 37.141 of the CAA regulations, maintain current levels of paratransit service until the coordinated plan goes into effect.

_____

signature

_____

name of authorized official

_____
title

_____
date

Part 38—Congressional Accountability Act [CAA] Accessibility Guidelines for Transportation Vehicles

Subpart A—General

Subpart B—Buses, Vans and Systems

Subpart C—Rapid Rail Vehicles and Systems

Subpart D—Light Rail Vehicles and Systems

Subpart F—Over-the-Road Buses and Systems

Subpart G—Other Vehicles and Systems

SUBPART A—GENERAL

§38.1 Purpose.

This part provides minimum guidelines and requirements for accessibility standards in part 37 of these regulations for transportation vehicles required to be accessible by section 210 of the Congressional Accountability Act (2 U.S.C. 1331, *et seq.*) which, *inter alia*, applies the rights and protections of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to covered entities within the Legislative Branch.

§38.2 Equivalent facilitation.

Departures from particular technical and scoping requirements of these guidelines by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle. Departures are to be considered on a case-by-case basis by the Office of Compliance under the procedure set forth in §37.7 of these regulations.

§38.3 Definitions.

See §37.3 of these regulations.

§38.4 Miscellaneous instructions.

(a) *Dimensional conventions.* Dimensions that are not noted as minimum or maximum are absolute.

(b) *Dimensional tolerances.* All dimensions are subject to conventional engineering tolerances for material properties and field conditions, including normal anticipated wear not exceeding accepted industry-wide standards and practices.

(c) *Notes.* The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix.

(d) *General terminology.* (1) *Comply with* means meet one or more specification of these guidelines.

(2) *If,* or *if * * * then* denotes a specification that applies only when the conditions described are present.

(3) *May* denotes an option or alternative.

(4) *Shall* denotes a mandatory specification or requirement.

(5) *Should* denotes an advisory specification or recommendation and is used only in the appendix to this part.

SUBPART B—BUSES, VANS AND SYSTEMS

§38.21 General.

(a) New, used or remanufactured buses and vans (except over-the-road buses covered by subpart G of this part), to be considered accessible by regulations issued by the Board of Directors of the Office of Compliance in part 37 of these regulations, shall comply with the applicable provisions of this subpart.

(b) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible buses be retrofitted with lifts, ramps or other boarding devices.

§38.23 Mobility aid accessibility.

(a) *General.* All vehicles covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location. At least two securement locations and devices, complying with paragraph (d) of this section, shall be provided on vehicles in excess of 22 feet in length; at least one securement location and device, complying with paragraph (d) of this section, shall be provided on vehicles 22 feet in length or less.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., ''rotary lift''), the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a single failure of any load carrying component.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3 inches above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

(6) *Platform surface.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 28½ inches at the platform, a minimum clear width of 30 inches measured from 2 inches above the platform surface to 30 inches above the platform, and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1)

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall

not exceed ⅝ inch in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semiautomatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch high shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during lowering and lifting an occupant, and shall not exceed 12 inches/second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8 inches long with the lowest portion a minimum 30 inches above the platform and the highest portion a maximum 38 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps 30 inches or longer shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material. Ramps shorter than 30 inches shall support a load of 300 pounds.

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch high; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Ramps shall have the least slope practicable and shall not exceed 1:4 when deployed to ground level. If the height of the vehicle floor from which the ramp is deployed is 3 inches or less above a 6-inch curb, a maximum slope of 1:4 is permitted; if the height of the vehicle floor from which the ramp is deployed is 6 inches or less, but greater than 3 inches, above a 6-inch curb, a maximum slope of 1:6 is permitted; if the height of the vehicle floor from which the ramp is deployed is 9 inches or less, but greater than 6 inches, above a 6-inch curb, a maximum slope of 1:8 is permitted; if the height of the vehicle floor from which the ramp is deployed is greater than 9 inches above a 6-inch curb, a slope of 1:12 shall be achieved. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that no gap between vehicle and ramp exceeds inch.

(7) *Stowage.* A compartment, securement system, or other appropriate method shall be provided to ensure that stowed ramps, including portable ramps stowed in the passenger area, do not impinge on a passenger's wheelchair or mobility aid or pose any hazard to passengers in the event of a sudden stop or maneuver.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 38 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems on vehicles with GVWRs of 30,000 pounds or above, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,000 pounds per securement leg or clamping mechanism and a minimum of 4,000 pounds for each mobility aid. Securement systems on vehicles with GVWRs of up to 30,000 pounds, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Such space shall adjoin, and may overlap, an access path. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall either be automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* In vehicles in excess of 22 feet in length, at least one securement device or system required by paragraph (a) of this section shall secure the wheelchair or mobility aid facing toward the front of the vehicle. In vehicles 22 feet in length or less, the required securement device may secure the wheelchair or mobility aid either facing toward the front of the vehicle or rearward. Additional securement devices or systems shall secure the wheelchair or mobility aid facing forward or rearward. Where the wheelchair or mobility aid is secured facing the rear of the vehicle, a padded barrier shall be provided. The padded barrier shall extend from a height of 38 inches from the vehicle floor to a height of 56 inches from the vehicle floor with a width of 18 inches, laterally centered immediately in back of the seated individual. Such barriers need not be solid provided equivalent protection is afforded.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction under normal vehicle operating conditions.

(6) *Stowage.* When not being used for securement, or when the securement area can be used by standees, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, shall be reasonably protected from vandalism, and shall be readily accessed when needed for use.

(7) *Seat belt and shoulder harness.* For each wheelchair or mobility aid securement device provided, a passenger seat belt and shoulder harness, complying with all applicable provisions of part 571 of title 49 CFR, shall also be provided for use by wheelchair or mobility aid users. Such seat belts and shoulder harnesses shall not be used in lieu of a device which secures the wheelchair or mobility aid itself.

§38.25 Doors, steps and thresholds.

(a) *Slip resistance.* All aisles, steps, floor areas where people walk and floors in securement locations shall have slip-resistant surfaces.

(b) *Contrast.* All step edges, thresholds, and the boarding edge of ramps or lift platforms shall have a band of color(s) running the full width of the step or edge which contrasts from the step tread and riser, or lift or ramp surface, either light-on-dark or dark-on-light.

(c) *Door height.* For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches. For vehicles of 22 feet in length or less, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 56 inches.

§38.27 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.

(b) Each securement location shall have a sign designating it as such.

(c) Characters on signs required by paragraphs (a) and (b) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character

height (using an upper case ''X'') of 5/8 inch, with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background either light-on-dark or dark-on-light.

§38.29 Interior circulation, handrails and stanchions.

(a) Interior handrails and stanchions shall permit sufficient turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used on vehicles in excess of 22 feet in length, a horizontal passenger assist shall be located across the front of the vehicle and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the front door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) For vehicles in excess of 22 feet in length, overhead handrail(s) shall be provided which shall be continuous except for a gap at the rear doorway.

(d) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(e) For vehicles in excess of 22 feet in length with front-door lifts or ramps, vertical stanchions immediately behind the driver shall either terminate at the lower edge of the aisle-facing seats, if applicable, or be ''dog-legged'' so that the floor attachment does not impede or interfere with wheelchair footrests. If the driver seat platform must be passed by a wheelchair or mobility aid user entering the vehicle, the platform, to the maximum extent practicable, shall not extend into the aisle or vestibule beyond the wheel housing.

(f) For vehicles in excess of 22 feet in length, the minimum interior height along the path from the lift to the securement location shall be 68 inches. For vehicles of 22 feet in length or less, the minimum interior height from lift to securement location shall be 56 inches.

§38.31 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread or lift platform.

(b) Other stepwells and doorways, including doorways in which lifts or ramps are installed, shall have, at all times, at least 2 foot-candles of illumination measured on the step tread, or lift or ramp, when deployed at the vehicle floor level.

(c) The vehicle doorways, including doorways in which lifts or ramps are installed, shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§38.33 Fare box.

Where provided, the farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule, especially wheelchairs or mobility aids.

§38.35 Public information system.

(a) Vehicles in excess of 22 feet in length, used in multiple-stop, fixed-route service, shall be equipped with a public address system permitting the driver, or recorded or digitized human speech messages, to announce stops and provide other passenger information within the vehicle.

(b) [Reserved]

§38.37 Stop request.

(a) Where passengers may board or alight at multiple stops at their option, vehicles in excess of 22 feet in length shall provide controls adjacent to the securement location for requesting stops and which alerts the driver that a mobility aid user wishes to disembark. Such a system shall provide auditory and visual indications that the request has been made.

(b) Controls required by paragraph (a) of this section shall be mounted no higher than 48 inches and no lower than 15 inches above the floor, shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

§38.39 Destination and route signs.

(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns'', with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either dark-on-light or light-on-dark.

SUBPART C—RAPID RAIL VEHICLES AND SYSTEMS

§38.51 General.

(a) New, used and remanufactured rapid rail vehicles, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

(c) Existing vehicles which are retrofitted to comply with the one-car-per-train rule of §37.93 of these regulations shall comply with §§38.55, 38.57(b), 38.59 of this part and shall have, in new and key stations, at least one door complying with §§38.53(a)(1), (b) and (d) of this part. Removal of seats is not required. Vehicles previously designed and manufactured in accordance with the accessibility requirements of part 609 of title 49 CFR or the Secretary of Transportation regulations implementing section 504 of the Rehabilitation Act of 1973 that were in effect before October 7, 1991 and which can be entered and used from stations in which they are to be operated, may be used to satisfy the requirements of §37.93 of these regulations.

§38.53 Doorways.

(a) *Clear width.* (1) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(2) If doorways connecting adjoining cars in a multi-car train are provided, and if such doorway is connected by an aisle with a minimum clear width of 30 inches to one or more spaces where wheelchair or mobility aid users can be accommodated, then such doorway shall have a minimum clear opening of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency.

(b) *Signage.* The International Symbol of Accessibility shall be displayed on the exterior of accessible vehicles operating on an accessible rapid rail system unless all vehicles are accessible and are not marked by the access symbol. (See Fig. 6)

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* Where new vehicles will operate in new stations, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between each vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus 5/8 inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(2) *Exception.* New vehicles operating in existing stations may have a floor height within plus or minus 1½ inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception.* Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height.

§38.55 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 5/8 inch, with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either light-on-dark or dark-on-light.

§38.57 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be provided to assist safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) Handrails, stanchions, and seats shall allow a route at least 32 inches wide so that at least two wheelchair or mobility aid users can enter the vehicle and position the wheelchairs or mobility aids in areas, each having a minimum clear space of 48 inches by 30 inches, which do not unduly restrict movement of other passengers. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required. Particular attention shall be given to ensuring maximum maneuverability

immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid user circulation and shall be kept to a minimum in the vicinity of doors.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or provide an equivalent gripping surface and shall provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface.

§38.59 Floor surfaces.

Floor surfaces on aisles, places for standees, and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

§38.61 Public information system.

(a)(1) *Requirements.* Each vehicle shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information. Alternative systems or devices which provide equivalent access are also permitted. Each vehicle operating in stations having more than one line or route shall have an external public address system to permit transportation system personnel, or recorded or digitized human speech messages, to announce train, route, or line identification information.

(2) *Exception.* Where station announcement systems provide information on arriving trains, an external train speaker is not required.

(b) [Reserved]

§38.63 Between-car barriers.

(a) *Requirement.* Suitable devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and open only when trains are correctly aligned with the doors.

SUBPART D—LIGHT RAIL VEHICLES AND SYSTEMS

§38.71 General.

(a) New, used and remanufactured light rail vehicles, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b)(1) Vehicles intended to be operated solely in light rail systems confined entirely to a dedicated right-of-way, and for which all stations or stops are designed and constructed for revenue service after the effective date of standards for design and construction §37.21 and §37.23 of these regulations, shall provide level boarding and shall comply with §38.73(d)(1) and §38.85 of this part.

(2) Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with §38.83(b) or (c) of this part.

(c) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

(d) Existing vehicles retrofitted to comply with the ''one-car-per-train rule'' at §37.93 of these regulations shall comply with §38.75, §38.77(c), §38.79(a) and §38.83(a) of this part and shall have, in new and key stations, at least one door which complies with §§38.73(a)(1), (b) and (d). Vehicles previously designed and manufactured in accordance with the accessibility requirements of 49 CFR part 609 or the Secretary of Transportation regulations implementing section 504 of the Rehabilitation Act of 1973 that were in effect before October 7, 1991 and which can be entered and used from stations in which they are to be operated, may be used to satisfy the requirements of §37.93 of these regulations.

§38.73 Doorways.

(a) *Clear width.* (1) All passenger doorways on vehicle sides shall have minimum clear openings of 32 inches when open.

(2) If doorways connecting adjoining cars in a multi-car train are provided, and if such doorway is connected by an aisle with a minimum clear width of 30 inches to one or more spaces where wheelchair or mobility aid users can be accommodated, then such doorway shall have a minimum clear opening of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency.

(b) *Signage.* The International Symbol of Accessibility shall be displayed on the exterior of each vehicle operating on an accessible light rail system unless all vehicles are accessible and are not marked by the access symbol. (See Fig. 6)

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* The design of level-entry vehicles shall be coordinated with the boarding platform or mini-high platform design so that the horizontal gap between a vehicle at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by vehicle air suspension, automatic ramps or lifts, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height within plus or minus 1½ inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception.* Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height.

(4) *Exception.* Where it is not operationally or structurally practicable to meet the horizontal or vertical requirements of paragraphs (d)(1), (2) or (3) of this section, platform or vehicle devices complying with §38.83(b) or platform or vehicle mounted ramps or bridge plates complying with §38.83(c) shall be provided.

§38.75 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

(c) Characters on signs required by paragraphs (a) or (b) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case X'') of ⅝ inch, with wide spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either light-on-dark or dark-on-light.

§38.77 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) At entrances equipped with steps, handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such handrails or stanchions throughout the boarding process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) At all doors on level-entry vehicles, and at each entrance accessible by lift, ramp, bridge plate or other suitable means, handrails, stanchions, passenger seats, vehicle driver seat platforms, and fare boxes, if applicable, shall be located so as to allow a route at least 32 inches wide so that at least two wheelchair or mobility aid users can enter the vehicle and position the wheelchairs or mobility aids in areas, each having a minimum clear space of 48 inches by 30 inches, which do not unduly restrict movement of other passengers. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of accessible doors.

§38.79 Floors, steps and thresholds.

(a) Floor surfaces on aisles, step treads, places for standees, and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

(b) All thresholds and step edges shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor, either light-on-dark or dark-on-light.

§38.81 Lighting.

(a) Any stepwell or doorway with a lift, ramp or bridge plate immediately adjacent to the driver shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread or lift platform.

(b) Other stepwells, and doorways with lifts, ramps or bridge plates, shall have, at all times, at least 2 footcandles of illumination measured on the step tread or lift or ramp, when deployed at the vehicle floor level.

(c) The doorways of vehicles not operating at lighted station platforms shall have outside lights which provide at least 1 foot candle of illumination on the station platform

or street surface for a distance of 3 feet perpendicular to all points on the bottom step tread. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§38.83 Mobility aid accessibility.

(a)(1) *General.* All new light rail vehicles, other than level entry vehicles, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit at least two wheelchair or mobility aid users to reach areas, each with a minimum clear floor space of 48 inches by 30 inches, which do not unduly restrict passenger flow. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required.

(2) *Exception.* If lifts, ramps or bridge plates meeting the requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with §38.73(d) of this part are provided, the vehicle is not required to be equipped with a car-borne device. Where each new vehicle is compatible with a single platform-mounted access system or device, additional systems or devices are not required for each vehicle provided that the single device could be used to provide access to each new vehicle if passengers using wheelchairs or mobility aids could not be accommodated on a single vehicle.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes, propulsion system, or door, or shall provide other appropriate mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where physical or safety constraints prevent the deployment at some stops of a lift having its long dimension perpendicular to the vehicle axis, the transportation entity may specify a lift which is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., ''rotary lift''). The requirements of paragraph (b)(2)(i) of this section prohibiting the lift from being stowed while occupied shall not apply to a lift design of this type if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(iii) *Exception.* The brake or propulsion system interlocks requirement does not apply to a station platform mounted lift provided that a mechanical, electrical or other system operates to ensure that vehicles do not move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift intended to be stowed while occupied.

(4) *Power or equipment failure.* Lift platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a single failure of any load carrying component.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the lift during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the lift is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically rise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the lift is more than 3 inches above the station platform or roadway and the lift is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged or disengaged by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 28½ inches at the platform, a minimum clear width of 30 inches measured from 2 inches above the lift platform surface to 30 inches above the surface, and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8 measured on level ground, for a maximum rise of 3 inches, and the transition from the station platform or roadway to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch high shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during lowering and lifting an occupant, and shall not exceed 12 inches/second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, on two sides, which move in tandem with the lift which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8 inches long with the lowest portion a minimum 30 inches above the platform and the highest portion a maximum 38 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates 30 inches or longer shall support a load of 600 pounds, placed at the centroid of the ramp or bridge plate distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material. Ramps or bridge plates shorter than 30 inches shall support a load of 300 pounds.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches, and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or station platform and the transition from vehicle floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Ramps or bridge plates shall have the least slope practicable. If the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is 3 inches or less above the station platform a maximum slope of 1:4 is permitted; if the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is 6 inches or less, but more than 3 inches, above the station platform a maximum slope of 1:6 is permitted; if the height of the vehicle

floor, under 50% passenger load, from which the ramp is deployed is 9 inches or less, but more than 6 inches, above the station platform a maximum slope of 1:8 is permitted; if the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is greater than 9 inches above the station platform a slope of 1:12 shall be achieved. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be attached to the vehicle, or otherwise prevented from moving such that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp or bridge plate, and station platform and ramp or bridge plate, shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of vehicle devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* A compartment, securement system, or other appropriate method shall be provided to ensure that stowed ramps or bridge plates, including portable ramps or bridge plates stowed in the passenger area, do not impinge on a passenger's wheelchair or mobility aid or pose any hazard to passengers in the event of a sudden stop.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 38 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

§38.85 Between-car barriers

Where vehicles operate in a high-platform, level-boarding mode, devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

§38.87 Public information system.

(a) Each vehicle shall be equipped with an interior public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information. Alternative systems or devices which provide equivalent access are also permitted.

(b) [Reserved].

§38.91-38.127 [Reserved]

SUBPART F—OVER-THE-ROAD BUSES AND SYSTEMS

§38.151 General.

(a) New, used and remanufactured over-the-road buses, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) Over-the-road buses covered by §37.7(c) of these regulations shall comply with §38.23 and this subpart.

§38.153 Doors, steps and thresholds.

(a) Floor surfaces on aisles, step treads and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

(b) All step edges shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser, either dark-on-light or light-on-dark.

(c) To the maximum extent practicable, doors shall have a minimum clear width when open of 30 inches, but in no case less than 27 inches.

§38.155 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such handrails or stanchions throughout the boarding process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(b) Where provided within passenger compartments, handrails or stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

§38.157 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(b) The vehicle doorway shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§38.159 Mobility aid accessibility. [Reserved]

SUBPART G—OTHER VEHICLES AND SYSTEMS

§38.171 General.

(a) New, used and remanufactured vehicles and conveyances for systems not covered by other subparts of this part, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) If portions of the vehicle or conveyance are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§38.173 Automated guideway transit vehicles and systems.

(a) Automated Guideway Transit (AGT) vehicles and systems, sometimes called ''people movers,'' operated in airports and other areas where AGT vehicles travel at slow speed (i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation), shall comply with the provisions of §38.53(a) through (c), and §§38.55 through 38.61 of this part for rapid rail vehicles and systems.

(b) Where the vehicle covered by paragraph (a) of this section will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 1 inch and the height of the vehicle floor shall be within plus or minus ½ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(c) In stations where open platforms are not protected by platform screens, a suitable device or system shall be provided to prevent, deter or warn individuals from stepping off the platform between cars. Acceptable devices include, but are not limited to, pantograph gates, chains, motion detectors or other appropriate devices.

(d) Light rail and rapid rail AGT vehicles and systems shall comply with subparts D and C of this part, respectively. AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this subsection.

§38.175 [Reserved]

§38.177 [Reserved]

§38.179 Trams, similar vehicles and systems.

(a) New and used trams consisting of a tractor unit, with or without passenger accommodations, and one or more passenger trailer units, including but not limited to vehicles providing shuttle service to remote parking areas, between hotels and other public accommodations, and between and within amusement parks and other recreation areas, shall comply with this section. For purposes of determining applicability of §§37.101 or 37.105 of these regulations, the capacity of such a vehicle or ''train'' shall consist of the total combined seating capacity of all units, plus the driver, prior to any modification for accessibility.

(b) Each tractor unit which accommodates passengers and each trailer unit shall comply with §38.25 and §38.29 of this part. In addition, each such unit shall comply with §§38.23(b) or (c) and shall provide at least one space for wheelchair or mobility aid users complying with §38.23(d) of this part unless the complete operating unit consisting of tractor and one or more trailers can already accommodate at least two wheelchair or mobility aid users.

Figures in Part 38

[Copies of these figures may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999.]

Appendix to Part 38—Guidance Material

This appendix contains materials of an advisory nature and provides additional information that should help the reader to understand the minimum requirements of the guidelines or to design vehicles for greater accessibility. Each entry is applicable to all subparts of this part except where noted. Nothing in this appendix shall in any way obviate any obligation to comply with the requirements of the guidelines themselves.

I. Slip Resistant Surfaces—Aisles, Steps, Floor Area Where People Walk, Floor Areas in Securement Locations, Lift Platforms, Ramps

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under conditions likely to be found on the surface. While the dynamic coefficient of friction during walking varies in a complex and nonuniform way, the static coefficient of friction, which can be measured in several ways, provides a close approximation of the slip resistance of a surface. Contrary to popular belief, some slippage is necessary to walking,

especially for persons with restricted gaits; a truly ''non-slip'' surface could not be negotiated.

The Occupational Safety and Health Administration recommends that walking surfaces have a static coefficient of friction of 0.5. A research project sponsored by the Architectural and Transportation Barriers Compliance Board (Access Board) conducted tests with persons with disabilities and concluded that a higher coefficient of friction was needed by such persons. A static coefficient of friction of 0.6 is recommended for steps, floors, and lift platforms and 0.8 for ramps.

The coefficient of friction varies considerably due to the presence of contaminants, water, floor finishes, and other factors not under the control of transit providers and may be difficult to measure. Nevertheless, many common materials suitable for flooring are now labeled with information on the static coefficient of friction. While it may not be possible to compare one product directly with another, or to guarantee a constant measure, transit operators or vehicle designers and manufacturers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely. The Access Board's advisory guidelines on Slip Resistant Surfaces provides additional information on this subject.

II. Color Contrast—Step Edges, Lift Platform Edges

The material used to provide contrast should contrast by at least 70%. Contrast in percent is determined by:

Contrast = $[(B_1–B_2)/B_1]$ 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

III. Handrails and Stanchions

In addition to the requirements for handrails and stanchions for rapid, light, and commuter rail vehicles, consideration should be given to the proximity of handrails or stanchions to the area in which wheelchair or mobility aid users may position themselves. When identifying the clear floor space where a wheelchair or mobility aid user can be accommodated, it is suggested that at least one such area be adjacent or in close proximity to a handrail or stanchion. Of course, such a handrail or stanchion cannot encroach upon the required 32 inch width required for the doorway or the route leading to the clear floor space which must be at least 30 by 48 inches in size.

IV. Priority Seating Signs and Other Signage

A. *Finish and Contrast.* The characters and background of signs should be eggshell, matte, or other non-glare finish. An eggshell finish (11 to 19 degree gloss on 60 degree glossimeter) is recommended. Characters and symbols should contrast with their background either light characters on a dark background or dark characters on a light background. Research indicates that signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent. Contrast in percent is determined by:

Contrast = $[(B_1–B_2)/B_1]$ 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

B. *Destination and Route Signs.* The following specifications, which are required for buses (§38.39), are recommended for other types of vehicles, particularly light rail vehicles, where appropriate.

1. Where destination or route information is displayed on the exterior of a vehicle, each vehicle should have illuminated signs on the front and boarding side of the vehicle.

2. Characters on signs covered by paragraph IV.B.1 of this appendix should have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns,'' with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and should contrast with the background, either dark-on-light or light-on-dark, or as recommended above.

C. *Designation of Accessible Vehicles.* The International Symbol of Accessibility should be displayed as shown in Figure 6.

V. Public Information Systems

There is currently no requirement that vehicles be equipped with an information system which is capable of providing the same or equivalent information to persons with hearing loss. While the Department of Transportation assesses available and soon-to-be available technology during a study conducted during Fiscal Year 1992, entities are encouraged to employ whatever services, signage or alternative systems or devices that provide equivalent access and are available. Two possible types of devices are visual display systems and listening systems. However, it should be noted that while visual display systems accommodate persons who are deaf or are hearing impaired, assistive listening systems aid only those with a partial loss of hearing.

A. *Visual Display Systems.* Announcements may be provided in a visual format by the use of electronic message boards or video monitors.

Electronic message boards using a light emitting diode (LED) or ''flip-dot'' display are currently provided in some transit stations and terminals and may be usable in vehicles. These devices may be used to provide real time or pre-programmed messages; however, real time message displays require the availability of an employee for keyboard entry of the information to be announced.

Video monitor systems, such as visual paging systems provided in some airports (e.g., Baltimore-Washington International Airport), are another alternative. The Architectural and Transportation Barriers Compliance Board (Access Board) can provide technical assistance and information on these systems (''Airport TDD Access: Two Case Studies,'' (1990)).

B. *Assistive Listening Systems.* Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

An assistive listening system appropriate for transit vehicles, where a group of persons or where the specific individuals are not known in advance, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for a station or vehicle will necessarily be geared toward the ''average'' or aggregate needs of various individuals. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of listening system for people who use hearing aids equipped with ''T-coils'', but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

The Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Section 215 of the Congressional Accountability Act of 1995 (''CAA''), Pub. L. 104–1, 109 Stat. 3, as applied to covered employing offices and employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and public access statutes to covered employees within the Legislative Branch. Section 215(a) provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970, 29 U.S.C. §654 (''OSHAct''). 2 U.S.C. §1341(a). The provisions of section 215 are effective on January 1, 1997 for all employing offices except the General Accounting Office and the Library of Congress. 2 U.S.C. §1341(g). Accordingly, the rules included in this Notice of Proposed Rulemaking (''NPRM or Notice'') do not apply to the General Accounting Office or the Library of Congress at this time.

In addition to inviting comment in this NPRM, the Board, through the statutory appointees of the Office, sought consultation with the Secretary of Labor with regard to the development of these regulations in accordance with section 304(g) of the CAA. Specifically, the Occupational Safety and Health Administration provided helpful suggestions during the development of the proposed regulations. The Board also notes that the General Counsel of the Office has completed an inspection of all covered facilities for compliance with safety and health standards under section 215 of the CAA and has submitted his final report to Congress. Based on the information gleaned from these consultations and the experience gained from the inspections, the Board of Directors of the Office of Compliance is publishing these proposed regulations, pursuant to section 215(d) of the CAA, 2 U.S.C. §1341(d).

The purpose of these regulations is to implement section 215 of the CAA. This Notice proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities; and their employees. Accordingly:

(1) *Senate.* It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Senate and employees of the Senate, and this proposal regarding the Senate and its employees is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the House of Representatives and employees of the House of Representatives, and this proposal regarding the House of Representatives and its employees is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance, and their employees; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m. In addition, a copy of the material listed in the section of the proposed regulations entitled ''Incorporation by Reference'' is available for inspection and review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 724–9250 (voice), (202) 426–1912 (TTY). This Notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Services Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224–2705 (voice), (202) 224–5574 (TTY).

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 (''CAA''), Pub. L. 104–1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301–1438. In general, the CAA applies the rights and protections of eleven federal labor and employment and public access statutes to covered employees and employing offices.

Section 215(a) of the CAA provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (''OSHAct''), 29 U.S.C. §654. 2 U.S.C. §1341(a). Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees and a specific duty to comply with occupational safety and health standards promulgated under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders issued which are applicable to their actions and conduct.

Section 215(c) of the CAA provides that, upon the written request of any employing office or covered employee, the General Counsel of the Office shall exercise the authorities granted to the Secretary of Labor by subsections (a), (d), (e), and (f) of section 8 of the OSHAct to inspect and investigate places of employment under the jurisdiction of employing offices. 2 U.S.C. §1341(c). For the purposes of section 215, the General Counsel shall exercise the authorities granted to the Secretary of Labor in sections 9 and 10 of the OSHAct to issue a citation or notice to any employing office responsible for correcting a violation, or a notification to any employing office that the General Counsel believes has failed to correct a violation for which a citation has been issued within the period permitted for its correction. *Id.* Section 215(e) also requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with health and safety standards. 2 U.S.C. §1341(e).

Section 215(d) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1341(d). Section 215(d) further states that such regulations ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' *Id.* Section 215(d) further provides that the regulations ''shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.'' *Id.*

In developing these proposed regulations, a number of issues have been identified and explored. The Board has proposed to resolve these issues as described below.

A. In general

1. *Substantive regulations promulgated by the Secretary of Labor.*—Section 215(d)(2) requires the Board to issue regulations that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1341(d)(2).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated by the Secretary of Labor after notice and comment to implement section 5 of the OSHAct are ''substantive regulations'' within the meaning of section 215(d). *See, e.g.,* 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d)); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203); see also *Reves v. Ernst & Young,* 113 S.Ct. 1163, 1169 (1993) (where same phrase or term is used in two different places in the same statute, reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury,* 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 215 of the CAA, the provisions of the OSHAct applied by that section, and the regulations of the Secretary of Labor to determine whether and to what extent those regulations are substantive regulations promulgated to implement the substantive safety and health standards of section 5 of the OSHAct. As explained more fully below, the Board proposes to adopt otherwise applicable substantive health and safety standards of the Secretary's regulations published at Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations (''29 CFR'') with only limited modifications. The Board proposes not to adopt as substantive regulations under section 215(d) of the CAA those provisions of the Secretary's regulations that were not promulgated to implement provisions of section 5 of the OSHAct.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the Act's ''good cause'' requirement. With the exception of such technical and nomenclature changes, however, the Board does not propose substantial departure from otherwise applicable regulations of the Secretary.

2. *The board will adopt the substantive safety and health standards contained in Parts 1910 and 1926 of title 29 of the Code of Federal Regulations.*—Section 215(a) requires each employing office and covered employee to comply with the provisions of section 5 of the OSHAct, 29 U.S.C. §654. 2 U.S.C. §1341(a). Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees, and a specific duty to comply with occupational safety and health standards promulgated by the Occupational Safety and Health Administration (''OSHA'') under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders issued which are applicable to their actions and conduct.

The substantive occupational safety and health standards promulgated by OSHA which the Board intends to adopt are set forth at 29 CFR, Parts 1910 (general industry standards) and 1926 (construction industry standards). Although Part 1926 was originally promulgated by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act, the substantive safety and health standards (subparts C through Z) are adopted and incorporated by reference into Part 1910. *See* 29 CFR §1910.12. These regulations implement the substantive safety and health standards referred to in section 5 of the OSHAct and thus are ''substantive regulations'' which the Board proposes to adopt under section 215(d) of the CAA. However, the Board proposes not to adopt those regulatory provisions in Parts 1910 and 1926

that have no conceivable applicability to operations of employing offices within the Legislative Branch or are unlikely to be invoked. See 141 Cong. Rec. at S17604 (Nov. 28, 1995) (NPRM implementing section 203).

Adoption of the substantive safety and health standards of Parts 1910 and 1926 is consistent with the language and legislative history of section 215, which confirms that Congress expected the law as enacted to require that covered employing offices and covered employees comply with the existing substantive occupational safety and health standards promulgated by the Secretary of Labor. 141 Cong. Rec. S621, S625 (Jan. 9, 1995) (section 215 ''requires employees and employing offices . . . to comply with . . . the Occupational Safety and Health Standards promulgated by the Secretary of Labor under section 6 of that act.''). Similarly, the section-by-section analysis of H.R. 4822, a precursor to the CAA, clearly states that Congress expected the Board to adopt OSHA occupational safety and health standards promulgated under section 6 of the OSHAct as its own:

''It is not intended that the Board will replicate the work of the Secretary of Labor by promulgating its own standards similar to those promulgated by the Secretary of Labor under section 6 of the OSHA [citation omitted]. Rather, it is intended that the Board will adopt the Secretary's [occupational safety and health] standards, and only where the Board believes different rules would better serve the interests of OSHA and this Act will it adopt different rules.'' S.Rep. 103–396 (Oct. 3, 1994).

Adoption of the substantive safety and health standards of Parts 1910 and 1926 is also consistent with existing safety and health practices of employing entities within the Legislative Branch. For example, the Architect of the Capitol, which has direct superintendence responsibility for the majority of facilities subject to section 215, has maintained a policy of voluntary compliance with the safety and health standards under Parts 1910 and 1926 through its safety and health program. *See Congressional Coverage Legislation: Applying Laws to Congress: Hearings on S.29, S.103, S.357, S.207, and S.2194*, Before the Senate Comm. on Govt. Affairs, 103d Cong., 3d Sess. 55–56 (1995) (testimony of J. Raymond Carroll, Director of Engineering, Office of the Architect of the Capitol).

The Board also notes that the General Counsel applied the occupational safety and health standards under Parts 1910 and 1926 in his initial inspection of Legislative Branch facilities pursuant to section 215(c) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of safety and health standards under section 215, as well as the responsibility for inspecting covered facilities to ensure compliance. In his final inspection report, the General Counsel stated his view that application of Parts 1910 and 1926 standards appeared appropriate for such operations. *See* Report on Initial Inspections of Facilities for Compliance with the Occupational Safety and Health Standards Under Section 215 (''Safety and Health Report''), p. I–2 (June 28, 1996).

For all of these reasons, the Board proposes to adopt all otherwise applicable sections of Parts 1910 and 1926 as substantive regulations under section 215(d).

3. *Modification of Parts 1910 and 1926, 29 CFR.*—The Board has considered whether and to what extent it should modify otherwise applicable substantive safety and health standards at 29 CFR, Parts 1910 and 1926. As the Board has noted in prior rulemakings, the language and legislative history of the CAA leads the Board to conclude that, absent clear statutory language to the contrary, the Board should hew as closely as possible to the text of otherwise applicable regulations implementing the statutory provisions applied to the Legislative Branch. *See, e.g.,* 142 Cong. Rec. S221, S222 (Jan. 22, 1996) (Notice of Adoption of Rules Implementing Section 203) (''The CAA was intended not only to bring covered employees the benefits of the . . . incorporated laws, but also require Congress to experience the same compliance burdens faced by other employers so that it could more fairly legislate in this area.''). Thus, consistent with its prior decisions, the Board proposes to issue Parts 1910 and 1926 of the Secretary's regulations with only technical changes in the nomenclature and deletion of those sections clearly inapplicable to the Legislative Branch. *See, e.g.,* 141 Cong. Rec. S17603–S17604 (Nov. 28, 1995) (preamble to NPRM under section 203 of the CAA).

This conclusion is also supported by the General Counsel's inspection report, which applied the substantive safety and health standards to covered facilities in the course of his initial inspections under section 215(e) of the CAA. Specifically, the report found nothing about work operations within facilities of the Legislative Branch that suggested that they were so different from those in comparable private sector facilities as to require a different safety and health standard. *See generally* Safety and Health Report. Thus, with the exception of nonsubstantive technical and nomenclature changes, the Board proposes no departure from the text of otherwise applicable portions of Parts 1910 and 1926.

4. *Secretary of Labor's regulations that the board proposes not to adopt.*—In reviewing the remaining parts of the Secretary's regulations, it is apparent that they either were not promulgated by the Secretary of Labor to implement the safety and health standards referred to in section 5 of the OSHAct and/or have no application to employing offices or other facilities within the Legislative Branch. For this reason, the Board is not including them within its substantive regulations. Among the excluded regulations are the following parts of 29 CFR: Part 1902 (adoption of health and safety standards and enforcement plans by States); Part 1908 (cooperative agreements between OSHA and the States); Parts 1911 and 1912 (procedure for promulgating, modifying or revoking occupational safety and health standards by OSHA); Parts 1915–1922 (occupational safety and health standards and procedures for shipyards, marine terminals, and longshoring operations); Part 1914 (safety and health standards applicable to workshops and rehabilitation facilities assisted by federal grants); Part 1925 (safety and health requirements under the Service Contract Act of 1965); Part 1928 (occupational safety and health standards applicable to agricultural operations); Part 1949 (OSHA Office of Training and Education regulations); Parts 1950–1956 (State occupational safety and health regulation and enforcement plans and planning grants to States); Part 1960 (occupational safety and health regulation of Federal executive branch employees and agencies, implementing section 19 of the OSHAct); Part 1975 (regulations clarifying the definition of employer under the OSHAct); Part 1978 (regulations implementing section 405 of the Surface Transportation Assistance Act of 1982); Part 1990 (regulations relating to identification, classification, and regulation of potential occupational carcinogens); Part 2201 (regulations implementing the Freedom of Information Act); Part 2202 (rules of ethics and conduct of Occupational Safety and Health Review Commission employees); Part 2203 (regulations implementing the Government in the Sunshine Act); Part 2204 (regulations implementing the Equal Access to Justice Act in Proceedings before the Occupational Safety and Health Review Commission); Part 2205 (regulations enforcing the provisions prohibiting discrimination on the basis of handicap in programs or activities conducted by the OSHRC); and Part 2400 (regulations implementing the Privacy Act). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 215(d) requires a regulation. *See* 2 U.S.C. §1411.

The Board will also not adopt as part of its regulations under section 215(d) of the CAA the rules of agency practice and procedure for the Occupational Safety and Health Review Commission (Part 2200), rules of agency practice and procedure regarding OSHA access to employee medical records (Part 1913), and rules implementing the rights and procedures regarding the antidiscrimination and anti-retaliation provisions of section 11 of the OSHAct (Part 1977). Although not within the scope of rulemaking under section 215(d), the Board has determined that the subject matter of these provisions may have general applicability to Board and Office proceedings under the CAA. Thus, these matters should be addressed, if at all, in the Office's development of appropriate changes in the procedural rules for section 215 cases that the Executive Director promulgates pursuant to section 303 of the CAA.

5. *Variance procedures.*—Section 215(c)(4) of the CAA authorizes the Board to consider and act on requests for variances by employing offices from otherwise applicable safety and health standards applied to them under this section, consistent with sections 6(b)(6) and 6(d) of the OSHAct. 2 U.S.C. §1341(c)(4). Part 1905, 29 CFR, contains the Secretary's rules of practice and procedure for variances under the OSHAct. Part 1905 was not promulgated to implement the health and safety standards referred to in section 5 of the OSHAct. Accordingly, it will not be adopted as part of the Board's section 215(d) regulations. However, the Board has determined that these regulations may concern matters ''governing the procedure of the Office'' and, therefore, may be addressed as part of a rulemaking under section 303 of the CAA.

6. *Procedure regarding inspections, citations, and notices.*—Section 215(c) of the CAA grants the General Counsel of the Office the authority under sections 8 and 9 of the OSHAct to inspect and investigate places of employment and issue citations and notices to employing offices responsible for correcting violations. 2 U.S.C. §1341(c). Part 1903 of the Secretary's regulations, which relates to the procedure for conducting inspections, and for issuing and contesting citations and proposed penalties, implements sections 8 and 9 of the OSHAct. The purpose of Part 1903, according to the Secretary, is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the OSHAct. *See* 29 CFR 1903.1. Part 1903 does not implement any substantive right or protection under section 5 of the OSHAct or of any substantive health and safety standard thereunder. Accordingly, the Board will not adopt part 1903 as part of its section 215(d) regulations. However, the Executive Director may consider adopting some or all of the rules contained in Part 1903 as part of the procedural rules of the Office, as applicable and appropriate.

7. *Notice posting and recordkeeping requirements.*—Section 215(c)(1) of the CAA grants to

the General Counsel of the Office of Compliance the authorities of the Secretary of Labor under the following subsections of section 8 of the OSHAct: (a) (authority of Secretary to enter, inspect, and investigate places of employment), (d) (methods of obtaining information), (e) (employer and employee representatives authorized to accompany inspectors), and (f) (requests for inspections), 29 U.S.C. section 657(a), (d), (e), and (f). 2 U.S.C. §1341(c)(1). Section 215 does not incorporate or make reference to section 8(c) of the OSHAct (requiring safety and health recordkeeping and posting of notices). More specifically, section 8(c) of the OSHAct is not a part of the rights and protections of section 5 of the OSHAct, nor is it a substantive safety and health standard referred to therein. Thus, section 215(d) of the CAA does not authorize the Board to incorporate the general notice and recordkeeping requirements promulgated by the Secretary to implement section 8(c) of the OSHAct and, consequently, such requirements (set forth at Part 1904) will not be imposed at this time. *See* 141 Cong. Rec. at S17604 (NPRM implementing section 203); 141 Cong. Rec. at S17656 (Nov. 28, 1995) (NPRM implementing section 204); 142 Cong. Rec. S221, S222 (Jan. 22, 1996) (Notice of Adoption of Regulations Implementing Section 203).

The Board also notes that there are certain recordkeeping requirements that are part of the substantive safety and health standards under parts 1910 and 1926, 29 CFR, such as employee exposure records under subpart Z. Thus, these regulations have been included in the Board's proposed regulations. *See* 141 Cong. Rec. at 17657 (daily ed. Jan. 22, 1996) (recordkeeping requirements included within portion of Employee Polygraph Protection Act applied by section 204 of the CAA must be included within the proposed rules).

The Board is also aware that Congress has enacted two special statutory provisions regarding safety and health that may already apply to some covered employing offices. Section 19(a) of the OSHAct, 29 U.S.C. §668(a), requires the head of each federal agency to ''establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated [by OSHA] under section 655.'' Agency heads are also required to submit annual reports to the Secretary on occupational accidents and injuries and on the agency programs established under section 668. However, the statute itself gives the Secretary no enforcement authority against federal agencies. OSHA regulations implementing section 668 are not binding on Legislative Branch agencies unless by agreement between OSHA and the head of the agency. *See* 29 C.F.R. §1960.2(b).

The related provisions of 5 U.S.C. §7902 cover an agency in ''any branch of the Government of the United States.'' Section 7902 imposes recordkeeping and report requirements on each agency similar to the requirements of 29 U.S.C. §668. There is no apparent mechanism for enforcement of section 7902 obligations regarding Legislative Branch agencies.

The above two provisions may arguably impose general recordkeeping requirements with respect to occupational accidents and injuries on some covered employing offices independent of the CAA, to the extent that such employing offices are found to be ''agencies'' within the meaning of those statutory provisions. The Board's resolution of the recordkeeping issue under section 215(e) of the CAA is not an attempt to modify the statutory provisions of 29 U.S.C. §668 and 5 U.S.C. §7902 and their applicability to Legislative Branch entities. Whether section 215 of the CAA and the regulations the Board proposes to implement thereunder can be harmonized with these preexisting statutory requirements not within the scope of the CAA that might independently apply to Legislative Branch entities is an issue that the Board has no occasion to address. *See* 142 Cong. Rec. at S224 (daily ed., Jan. 22, 1996) (Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations under section 203 of the CAA) (declining to address issue of harmonizing regulations regarding overtime exemption for law enforcement officers under section 203 with preexisting statutory overtime exemption for Capitol Police under 40 U.S.C. §§206b–206c).

B. Proposed regulations

1. *General provisions.*—The proposed regulations include a section on matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance.

2. *Incorporation by Reference of Part 1910 and Part 1926 Standards.*—The Board will incorporate by reference the portions of 29 CFR, Parts 1910 and 1926, it proposes to adopt, rather than setting forth the full text of those provisions in this Notice.

Incorporation by reference of the safety and health standards set forth in Parts 1910 and 1926 is appropriate under the circumstances and meets the ''good cause'' requirement of the CAA. The portions of Parts 1910 and 1926 that the Board proposes to adopt by reference contain only substantive safety and health standards that are published in Title 29 of the Code of Federal Regulations and that are thus reasonably available to commenters and to affected employing offices and covered employees. Moreover, incorporation by reference of Parts 1910 and 1926 would substantially reduce the volume of material published in the Congressional Record: Part 1910 and 1926 are set forth in three volumes of the Code of Federal Regulations. If restated herein, the material would consist of almost 6,500 pages of text and accompanying illustrations. Given that these standards are proposed to be adopted without change by the Board and are readily accessible to potential commenters, incorporation by reference is appropriate.

3. *Method for Identifying Responsible Employing Offices and Establishing Categories of Violations.*—Section 215(d)(3) of the CAA directs the Board to include in its regulations a method for identifying, for purposes of section 215 and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation. 2 U.S.C. §1341(d)(3). The method developed by the Board to identify entities responsible for correcting a violation of section 215(a) is set forth in section 1.106 of the proposed regulations. Section 1.106 is based in large part on the methods adopted and applied by the General Counsel during his initial inspections of covered employing offices under section 215(e). *See* Safety and Health Report, App. V.

a. Identifying the employing office responsible for correcting violations. In considering rules for identifying the employing office responsible for correcting violations under section 215, the Board is mindful that any regulation that it promulgates should neither expand nor contract the statutory safety and health obligations of employing offices under section 215. *See White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996) (agency cannot promulgate even substantive rules that are contrary to statute; if intent of Congress is clear, agency must give effect to that unambiguously expressed intent); *Conlan v. U.S. Dep't of Labor*, 76 F.23 271, 274 (9th Cir. 1996). Therefore, the Board has considered the nature of the safety and health obligations imposed on employing offices under the OSHAct, as applied by the terms of section 215(a). Specifically, the Board notes that section 215(a)(2)(C) expressly assigns liability to the employing office responsible for correcting the violation, ''irrespective of whether the particular employing office has an employment relationship with any covered employee in any employing office in which such violation occurs.''

In many cases, the primary employing office responsible for correcting the hazards identified under section 215 and for addressing the recommendations made by the General Counsel is the Architect of the Capitol, given the Architect's statutory responsibility for superintendence and control over the Capitol Building, House and Senate office buildings, and other similar facilities. *See, e.g.*, 40 U.S.C. §§163-166 (Capitol Building), 167-175 and 185a (House and Senate office buildings), 185 (Capitol Power Plant), 193a (Capitol grounds), and 216b (Botanical Garden). However, it is recognized that in some cases other employing offices, particularly the staff or occupants of office buildings under the Architect's superintendence, may have varying degrees of actual or apparent jurisdiction, authority, and responsibility for correction of violations. In other cases, the employing office may have a responsibility to notify or coordinate abatement of the hazard with the Architect of the Capitol or other employing office actually responsible for implementing the correction. Accordingly, proposed section 1.106 assigns responsibility to employing offices in four situations:

1. The employing office that actually created the hazard or condition identified. Frequently, the employing office that created the hazard is in the best position to correct the hazard, and has control over the manner and method of operations sufficient to avoid the hazard in the first place or reduce the hazard once created.

2. The employing office that is exposing its employees to the hazard or condition. Under the OSHAct, an employer has responsibility for the safety of its own employees and is required to instruct them about the hazards that might be encountered, including what protective measures to use. In the case of hazardous conditions, facilities, or equipment over which the employer has no control, it has a duty to at least warn its employees of the hazard and/or to prevent the employees exposure to the hazard by utilizing alternative locations or means to perform the work. *See Secretary of Labor v. Baker Tank Co.*, 17 OSHC 1177, 1180 (OSHRC April 10, 1995).

3. The employing office that is responsible for safety and health conditions in the workplace and has day-to-day control, in whole or in part, of the area where the hazard or condition is found. For example, a Member has effective control over his or her own office area, and has the responsibility for notifying the Architect or other responsible offices, when hazards are identified in his or her spaces, even though the Member may have no direct responsibility in many cases for carrying out the correction of the condition.

4. The employing office that is responsible for actually carrying out the correction (or for contacting other offices or otherwise arranging for correction of the hazard or condition). In many cases, the Architect is responsible for repairing and correcting physical hazards identified in his area of superintendence, such as electrical hazards. In some cases, other employing offices may have responsibility to actually carry out the correction, such as the Chief Administrative Officer of the House of Representatives with respect to carpet repair in House office buildings. In other cases, an employing office may

have responsibility for arranging for such corrections. For example, in House office buildings, repair of carpeting falls within the jurisdiction of the Chief Administrative Officer. However, the Superintendent of the House Office buildings, an Architect official, may have some responsibility for notifying the Chief Administrative Officer that such repairs are needed, if the Member or office staff does not do so.

The above rules are derived from the so-called multi-employer doctrine applied by OSHA as a means of apportioning liability for abatement and penalties at multi-employer worksites where one employer created the hazard and some employees, but not necessarily its own, are exposed to it. *See generally Brennan v. OSHRC (Underhill Construction Corp.),* 513 F.2d 1032, 1038 (2d Cir. 1975); Mark A. Rothstein, *Occupational Safety and Health Law* §§161–169 (3d ed. 1990). Under this doctrine, an employer at a multi-employer worksite is responsible, even in the absence of exposure of its own employees, for any hazardous conditions which it creates or controls. *Id. See also H.B. Zachry Co.*, 8 OSHC 1669, 1980 OSHD ¶25,588 (1980), *affirmed* 638 F.2d 812 (5th Cir. 1981); OSHA Field Inspection Reference Manual III–28 (1994).

There is an issue whether application of the multi-employer doctrine by OSHA in the private sector context is in all situations authorized by the OSHAct. *Compare Teal v. E.I. Du Pont de Nemours & Co.*, 728 F.2d 799, 804–05 (6th Cir. 1984) (''Once an employer is deemed responsible for complying with OSHA regulations, it is obligated to protect every employee who works at its workplace.'') and *Beatty Equip. Leasing v. Secretary of Labor*, F.2d 534, 537 (9th Cir. 1978) (subcontractor who supplied and erected scaffolding liable even where his own employees not exposed) with *Melerine v. Avondale Shipyards, Inc.*, 659 F.2d 706, 712 (5th Cir. 1981) (''In this circuit, therefore, the class protected by OSHA regulations comprises only employer's own employees.''). However, the Board need not address this issue because the CAA expressly imposes responsibility for correction of health and safety violations on an otherwise covered Legislative Branch entity ''irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs.'' 2 U.S.C. §1341(a)(2)(C). Accordingly, the above regulations are consistent with the OSHAct as modified by the express terms of section 215 of the CAA.

b. Classifying the level of risk/seriousness of the violation. The proposed regulations do not include a provision classifying categories of violations. The method for identifying the employing offices responsible for correcting a violation of section 215(a) set forth in section 1.106 of the proposed regulations is not affected by the category or type of violation. Moreover, such categories of violations are not set forth in any substantive regulations of the Secretary required to be adopted under section 215(d). Therefore, the Board does not propose any substantive regulations which set forth categories of violations.

The Board notes that the General Counsel has developed, as part of his authority to inspect covered facilities under section 215(e), classifications of violations to guide employing offices and covered employees in assigning priority for correction and abatement of hazards. The General Counsel's guidelines are based on those issued by OSHA in determining the amount of proposed penalties in cases involving private employers. *See generally* 29 U.S.C. §§666(j) and (k). Although neither the General Counsel nor the Office has authority to impose monetary penalties under section 215 of the CAA, *see* 2 U.S.C. §§1341(b) and 1361(c) (limiting remedy under section 215 to injunctive provisions of section 13(a) of the OSHAct and providing that no civil penalty may be awarded with respect to any claim under the CAA), the factors considered by OSHA in determining the amount of penalty may be useful as an expression of the gravity of the deficiency involved. A further description of these categories is set forth in the General Counsel's inspection report. *See* Safety and Health Report, App. I.

4. *Future changes in the text of the health and safety standards which the Board has adopted.*—The Board proposes that the section 215 regulations incorporate the text of the referenced health and safety standards of parts 1910 and 1926 in effect as of the effective date of these regulations. The Board takes notice that OSHA has in recent years made frequent changes, both technical and nontechnical, to its part 1910 and 1926 regulations, and is in the process of developing additional safety and health standards in some areas. The Board interprets the incorporation by reference of external documents or standards in the text of the adopted Parts 1910 and 1926 regulations (such as the provisions of the National Electrical Code) to include any future changes to such documents or standards. As the Office receives notice of such changes by OSHA, it will advise covered employing offices and employees of them as part of its education and information activities. As to changes in the text of the adopted regulations themselves, however, the Board finds that, under the CAA statutory scheme, additional Board rulemaking under section 215(d) will be required. The Board believes that it should afford Legislative Branch entities and employees potentially affected by adoption of such changes the opportunity to comment on the propriety of Board adoption of any such changes, and that the Congress should have the opportunity to specifically approve such adoption by the Board. The Board specifically invites comments on this proposal.

5. *Technical and nomenclature changes.*—The proposed regulations make technical and nomenclature changes, where appropriate, to conform to the provisions of the CAA.

Recommended method of approval: The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 18th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (SECTION 215 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

Part 1——Matters of General Applicability to All Regulations Promulgated Uuder Section 215 of the Congressional Accountability Act of 1995

Sec.
1.101 Purpose and scope
1.102 Definitions
1.103 Notice of protection
1.104 Authority of the Board
1.105 Method for identifying the entity responsible for correction of violations of section 215

§1.101 Purpose and scope.

(a) *Section 215 of the CAA.* Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law and public access statutes to covered employees and employing offices within the Legislative Branch. Section 215(a) of the CAA provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (''OSHAct''), 29 U.S.C. §654. Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees, and a specific duty to comply with occupational safety and health standards promulgated under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders which are applicable to their actions and conduct. Set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA.

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1 and 1900) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 215, including the method of identifying entities responsible for correcting a violation of section 215. Part 1900 contains the substantive safety and health standards which the Board has adopted as substantive regulations under section 215(e).

§1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995 (Pub.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *OSHAct* means the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. §§651, *et seq.*), as applied to covered employees and employing offices by Section 215 of the CAA.

(c) The term *covered employee* means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance.

(d) The term *employee* includes an applicant for employment and a former employee.

(e) The term *employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term *employee of the Capitol Police* includes any member or officer of the Capitol Police.

(g) The term *employee of the House of Representatives* includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term *employee of the Senate* includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term *employing office* means: (1) the personal office of a Member of the House of Representatives or the Senate or a joint committee; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(j) The term *employing office* includes any of the following entities that is responsible for correction of a violation of this section, irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such violation occurs: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Capitol Guide Service; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden); (8) the Office of the Attending Physician; and (9) the Office of Compliance.

(k) *Board* means the Board of Directors of the Office of Compliance.

(l) *Office* means the Office of Compliance.

(m) *General Counsel* means the General Counsel of the Office of Compliance.

§ 1.103 Coverage.

The coverage of Section 215 of the CAA extends to any ''covered employee.'' It also extends to any ''covered employing office,'' which includes any of the following entities that is responsible for correcting a violation of section 215 (as determined under section 1.106), irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

§ 1.104 Notice of protection.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 215 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

§ 1.105 Authority of the Board.

Pursuant to section 215 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of section 215(a). Section 215(d) of the CAA directs the Board to promulgate regulations implementing section 215 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1341(d). The regulations issued by the Board herein are on all matters for which section 215 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 215 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ 1.106 Method for identifying the entity responsible for correction of violations of section 215.

(a) *Purpose and scope.* Section 215(d)(3) of the CAA provides that regulations under section 215(d) include a method of identifying, for purposes of this section and for categories of violations of section 215(a), the employing office responsible for correcting a particular violation. This section sets forth the method for identifying responsible employing offices for the purpose of allocating responsibility for correcting violations of section 215(a) of the CAA. These rules apply to the General Counsel in the exercise of his authority to issue citations or notices to employing offices under sections 215(c)(2)(A) and (B), and to the Office and the Board in the adjudication of complaints under section 215(c)(3).

(b) *Employing Office(s) Responsible for Correcting a Violation of Section 215(a) of the CAA.* With respect to the safety and health standards and other obligations imposed upon employing offices under section 215(a) of the CAA, correction of a violation of section 215(a) is the responsibility of any employing office that is an exposing employing office, a creating employing office, a controlling employing office, and/or a correcting employing office, as defined in this subsection, to the extent that the employing office is in a position to correct or abate the hazard or to ensure its correction or abatement.

(i) *Creating employing office* means the employing office that actually created the hazard forming the basis of the violation or violations of section 215(a).

(ii) *Exposing employing office* means the employing office whose employees are exposed to the hazard forming the basis of the violation or violations of section 215(a).

(iii) *Controlling employing office* means the employing office that is responsible, by agreement or legal authority or through actual practice, for safety and health conditions in the location where the hazard forming the basis for the violation or violations of section 215(a) occurred.

(iv) *Correcting employing office* means the employing office that has the responsibility for actually performing (or the authority or power to order or arrange for) the work necessary to correct or abate the hazard forming the basis of the violation or violations of section 215(a).

(c) *Exposing Employing Office Duties.* Employing offices have direct responsibility for the safety and health of their own employees and are required to instruct them about the hazards that might be encountered, including what protective measures to use. An employing office may not contract away these legal duties to its employees or its ultimate responsibilities under section 215(a) of the CAA by requiring another party or entity to perform them. In addition, if equipment or facilities to be used by an employing office, but not under the control of the employing office, do not meet applicable health and safety standards or otherwise constitutes a violation of section 215(a), it is the responsibility of the employing office not to permit its employees to utilize such equipment or facilities. In such circumstances, the employing office is in violation if, and only if, it permits its employees to utilize such equipment or facilities. It is not the responsibility of an employing office to effect the correction of any such deficiencies itself, but this does not relieve it of its duty to use only equipment or facilities that meet the requirements of section 215(a).

Part 1900—Adoption of Occupational Safety and Health Standards

Sec.

§ 1900.1 Purpose and scope.

(a) The provisions of this subpart B adopt and extend the applicability of occupational safety and health standards established and promulgated by the Occupational Safety and Health Administration (''OSHA'') and set forth at Parts 1910 and 1926 of title 29 of the Code of Federal Regulations, with respect to every employing office, employee, and employment covered by section 215 of the Congressional Accountability Act.

(b) It bears emphasis that only standards (i.e., substantive rules) relating to safety or health are adopted by any incorporations by reference of standards prescribed in this Part. Other materials contained in the referenced parts are not adopted. Illustrations of the types of materials which are not adopted are these. The incorporation by reference of part 1926, 29 CFR, is not intended to include references to interpretative rules having relevance to the application of the Construction Safety Act, but having no relevance to the Occupational Safety and Health Act. Similarly, the incorporation by reference of part 1910, 29 CFR, is not intended to include any reference to the Assistant Secretary of Labor and the authorities of the Assistant Secretary. The authority to adopt, promulgate, and amend or revoke standards applicable to covered employment under the CAA rests with the Board of Directors of the Office of Compliance pursuant to sections 215(d) and 304 of the CAA. Notwithstanding anything to the contrary contained in the incorporated standards, the exclusive means for enforcement of these standards with respect to covered employment are the procedures and remedies provided for in section 215 of the CAA.

(c) This part incorporates the referenced safety and health standards in effect as of the effective date of these regulations.

§ 1900.2 Definitions, provisions regarding scope, applicability and coverage, and exemptions.

(a) Except where inconsistent with the definitions, provisions regarding scope, application and coverage, and exemptions provided in the CAA or other sections of these

regulations, the definitions, provisions regarding scope, application and coverage, and exemptions provided in Parts 1910 and 1926, 29 CFR, as incorporated into these regulations, shall apply under these regulations. For example, any reference to ''employer'' in Parts 1910 and 1926 shall be deemed to refer to ''employing office.'' Similarly, any limitation on coverage in Parts 1910 and 1926 to employers engaged ''in a business that affects commerce'' shall not apply in these regulations.

(b) The provisions of section 1910.6, 29 CFR, regarding the force and effect of standards of agencies of the U.S. Government and organizations that are not agencies of the U.S. Government, which are incorporated by reference in Part 1910, shall apply to the standards incorporated into these regulations.

(c) It is the Board's intent that the standards adopted in these regulations shall have the same force and effect as applied to covered employing offices and employees under section 215 of the CAA as those standards have when applied by OSHA to employers, employees, and places of employment under the jurisdiction of OSHA and the OSHAct.

§1900.3 Adoption of occupational safety and health standards.

(a) *Part 1910 Standards.* The standards prescribed in 29 CFR part 1910, Subparts B through S, and Subpart Z, as specifically referenced and set forth herein at Appendix A, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the appropriate standards described in this paragraph.

(b) *Part 1926 Standards.* The standards prescribed in 29 CFR part 1926, Subparts C through X and Subpart Z, as specifically referenced and forth herein at Appendix B, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the appropriate standards described in this paragraph.

(c) *Standards not adopted.* This section adopts as occupational safety and health standards under section 215(d) of the CAA the standards which are prescribed in Parts 1910 and 1926 of 29 CFR. Thus, the standards (substantive rules) published in subparts B through S and Z of part 1910 and subparts C through X and Z of part 1926 are applied. As set forth in Appendix A and Appendix B to this Part, this section does not incorporate all sections contained in these subparts. For example, this section does not incorporate sections 1910.15, 1910.16, and 1910.142, relating to shipyard employment, longshoring and marine terminals, and temporary labor camps, because such provisions have no application to employment within entities covered by the CAA.

(d) Copies of the standards which are incorporated by reference may be examined at the Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999. The OSHA standards may also be found at 29 CFR Parts 1910 and 1926. Copies of the standards may also be examined at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, and their regional offices. Copies of private standards may be obtained from the issuing organizations. Their names and addresses are listed in the pertinent subparts of Parts 1910 and 1926, 29 CFR.

(e) Any changes in the standards incorporated by reference in the portions of Parts 1910 and 1926, 29 CFR, adopted herein and an official historic file of such changes are available for inspection at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210.

Appendix A To Part 1900—References to Sections of Part 1910, 29 CFR, Adopted as Occupational Safety and Health Standards Under Section 215(d) of the CAA

The following is a reference listing of the sections and subparts of Part 1910, 29 CFR, which are adopted as occupational safety and health standards under section 215(d) of the Congressional Accountability Act. Unless otherwise specifically noted, any reference to a section number includes any appendices to that section.

Part 1910—Occupational Safety and Health Standards

Subpart B—Adoption and Extension of Established Federal Standards

Sec.
1910.12 Construction work.
1910.18 Changes in established Federal standards.
1910.19 Special provisions for air contaminants.

Subpart C—General Safety and Health Provisions [Reserved]

Subpart D—Walking—Working Surfaces

1910.21 Definitions.
1910.22 General requirements.
1910.23 Guarding floor and wall openings and holes.
1910.24 Fixed industrial stairs.
1910.25 Portable wood ladders.
1910.26 Portable metal ladders.
1910.27 Fixed ladders.
1910.28 Safety requirements for scaffolding.
1910.29 Manually propelled mobile ladder stands and scaffolds (towers).
1910.30 Other working surfaces.

Subpart E—Means of Egress

1910.35 Definitions.
1910.36 General requirements.
1910.37 Means of egress, general.
1910.38 Employee emergency plans and fire prevention plans.
APPENDIX TO SUBPART E—MEANS OF EGRESS

Subpart F—Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms

1910.66 Powered platforms for building maintenance.
1910.67 Vehicle-mounted elevating and rotating work platforms.
1910.68 Manlifts.

Subpart G—Occupational Health and Environmental Control

1910.94 Ventilation.
1910.95 Occupational noise exposure.
1910.97 Nonionizing radiation.

Subpart H—Hazardous Materials

1910.101 Compressed gases (general requirements).
1910.102 Acetylene.
1910.103 Hydrogen.
1910.104 Oxygen.
1910.105 Nitrous oxide.
1910.106 Flammable and combustible liquids.
1910.107 Spray finishing using flammable and combustible materials.
1910.108 Dip tanks containing flammable or combustible liquids.
1910.109 Explosives and blasting agents.
1910.110 Storage and handling of liquefied petroleum gases.
1910.111 Storage and handling of anhydrous ammonia.
1910.112 [Reserved]
1910.113 [Reserved]
1910.119 Process safety management of highly hazardous chemicals.
1910.120 Hazardous waste operations and emergency response.

Subpart I—Personal Protective Equipment

1910.132 General requirements.
1910.133 Eye and face protection.
1910.134 Respiratory protection.
1910.135 Head protection.
1910.136 Foot protection.
1910.137 Electrical protective devices.
1910.138 Hand Protection.

Subpart J—General Environmental Controls

1910.141 Sanitation.
1910.143 Nonwater carriage disposal systems. [Reserved]
1910.144 Safety color code for marking physical hazards.
1910.145 Specifications for accident prevention signs and tags.
1910.146 Permit-required confined spaces.
1910.147 The control of hazardous energy (lockout/tagout).

Subpart K—Medical and First Aid

1910.151 Medical services and first aid.
1910.152 [Reserved]

Subpart L—Fire Protection

1910.155 Scope, application and definitions applicable to this subpart.
1910.156 Fire brigades.
PORTABLE FIRE SUPPRESSION EQUIPMENT
1910.157 Portable fire extinguishers.
1910.158 Standpipe and hose systems.
FIXED FIRE SUPPRESSION EQUIPMENT
1910.159 Automatic sprinkler systems.
1910.160 Fixed extinguishing systems, general.
1910.161 Fixed extinguishing systems, dry chemical.
1910.162 Fixed extinguishing systems, gaseous agent.
1910.163 Fixed extinguishing systems, water spray and foam.
OTHER FIRE PROTECTIVE SYSTEMS
1910.164 Fire detection systems.
1910.165 Employee alarm systems.
APPENDICES TO SUBPART L
APPENDIX A TO SUBPART L—FIRE PROTECTION
APPENDIX B TO SUBPART L—NATIONAL CONSENSUS STANDARDS
APPENDIX C TO SUBPART L—FIRE PROTECTION REFERENCES FOR FURTHER INFORMATION
APPENDIX D TO SUBPART L—AVAILABILITY OF PUBLICATIONS INCORPORATED BY REFERENCE IN SECTION 1910.156 FIRE BRIGADES
APPENDIX E TO SUBPART L—TEST METHODS FOR PROTECTIVE CLOTHING

Subpart M—Compressed Gas and Compressed Air Equipment

1910.166 [Reserved]
1910.167 [Reserved]
1910.168 [Reserved]
1910.169 Air receivers.

Subpart N—Materials Handling and Storage

1910.176 Handling material—general.
1910.177 Servicing multi-piece and single piece rim wheels.
1910.178 Powered industrial trucks.
1910.179 Overhead and gantry cranes.
1910.180 Crawler locomotive and truck cranes.
1910.181 Derricks.
1910.183 Helicopters.
1910.184 Slings.

Subpart O—Machinery and Machine Guarding

1910.211 Definitions.
1910.212 General requirements for all machines.
1910.213 Woodworking machinery requirements.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5210. A letter from the Secretaries of Education and Labor, transmitting a report on activities carried out under the School-to-Work Opportunities Act; to the Committee on Economic and Educational Opportunities.

5211. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans and Redesignation of Puget Sound, Washington, for Air Quality Planning Purposes: Ozone [FRL–5613–3] received September 18, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

5212. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Libby Moderate PM10 Nonattainment Area [FRL–5609–8] received September 19, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

5213. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Operating Permits Program Interim Approval Extensions [FRL–5612–3] received September 19, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

5214. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Delaware; Final

Approval of State Underground Storage Tank Program [FRL–5614–6] received September 19, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

5215. A letter from the Inspector General, Environmental Protection Agency, transmitting the annual report to Congress summarizing the Office of Inspector General's work in the Environmental Protection Agency's Superfund Program for fiscal 1995, pursuant to Public Law 99–499, section 120(e)(5) (100 Stat. 1669); to the Committee on Commerce.

5216. A letter from the Acting Director, Defense Security Assistance Agency, transmitting the Department of the Air Force's proposed lease of defense articles to Oman (Transmittal No. 28–96), pursuant to 22 U.S.C. 2796a(a); to the Committee on International Relations.

5217. A letter from the Acting Director, Defense Security Assistance Agency, transmitting the Department of the Air Force's proposed lease of defense articles to Oman (Transmittal No. 25–96), pursuant to 22 U.S.C. 2796a(a); to the Committee on International Relations.

5218. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting memorandum of justification for use of section 506(a)(2) special authority to draw down articles, services, and military education and training, pursuant to Public Law 101–513, section 547(a) (104 Stat. 2019); to the Committee on International Relations.

5219. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting memorandum of justification for use of section 506(a)(2) special authority to draw down articles, services, and military education and training, pursuant to Public Law 101–513, section 547(a) (104 Stat. 2019); to the Committee on International Relations.

5220. A letter from the General Counsel, Federal Emergency Management Agency, transmitting notification of an altered system report to amend an existing routine use in the Federal Emergency Management Agency's Privacy Act system of records entitled, ''FEMA/REG–2, Disaster Recovery Assistance Files,'' pursuant to 5 U.S.C. 552a(e)(11); to the Committee on Government Reform and Oversight.

5221. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—Migratory Bird Hunting; Seasons and Bag Limits for the 1996–97 Youth Waterfowl Hunting Day (RIN: 1018–AD69) received September 18, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5222. A letter from the General Counsel, Department of Energy, transmitting the Department's final rule—Western Area Power Administration's Policy for the Purchase of Non-Hydropower Renewable Resources (6450–01–P) received September 16, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5223. A letter from the Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting notification that the Secretary of the Army has approved the Poplar Island, MD, beneficial use of dredged material project; to the Committee on Transportation and Infrastructure.

5224. A letter from the Chief Counsel, Bureau of the Public Debt, transmitting the Bureau's final rule—Government Securities Act Regulations: Large Position Rule (RIN: 1505–AA53) received September 16, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5225. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Compliance with Tax-Exempt Bond Arbitrage Requirements (Notice 96–49) received September 18, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5226. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Regulatory Reinvention Initiative—Request for Comments (Notice 96–35) received September 12, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5227. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of the Department's intent to provide $100,000 in fiscal year 1996 funds made available under chapter 6 of part II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, in the form of a voluntary contribution to the International Organization for Migration [IOM] for the use of the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, pursuant to 22 U.S.C. 2394–1(a); jointly, to the Committees on International Relations and Appropriations.

5228. A letter from the Executive Director, Office of Compliance, transmitting notice of proposed rulemaking for publication in the CONGRESSIONAL RECORD, pursuant to Public law 104–1, section 303(b) (109 Stat. 38); jointly, to the Committees on House Oversight and Economic and Educational Opportunities.

5229. A letter from the Board of Directors, Office of Compliance, transmitting notice of proposed rulemaking for publication in the CONGRESSIONAL RECORD, pursuant to Public Law 104–1, section 304(b)(1) (109 Stat. 29); jointly, to the Committees on House Oversight and Economic and Educational Opportunities.

5230. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation entitled ''Military Beneficiaries Medicare Reimbursement Model Project Act of 1996''; jointly, to the Committees on Ways and Means, National Security, and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 3828. A bill to amend the Indian Child Welfare Act of 1978, and for other purposes (Rept. 104–808). Referred to the Committee of the Whole House on the State of the Union.

Mr. SOLOMON: Committee on Rules. House Resolution 525. Resolution waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolutions reported from the Committee on Rules, and for other purposes (Rept. 104–809). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WILLIAMS (for himself and Mr. OXLEY):

H.R. 4114. A bill to improve and expand the system of safety of precautions that protects the welfare of professional boxers, to assist State boxing commissions to provide proper oversight for professional boxing, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FRAZER (for himself, Ms. MCKINNEY, Mr. OWENS, Mr. LEWIS of Georgia, Ms. WATERS, Mr. MORAN, Mr. RUSH, Mr. LAFALCE, Mrs. CLAYTON, Mr. FALEOMAVAEGA, Ms. BROWN of Florida, Mr. GENE GREEN of Texas, Mr. HINCHEY, Mr. BROWN of Ohio, Mr. HASTINGS of Florida, Mr. WATT of North Carolina, Mr. SERRANO, Mr. RANGEL, Ms. KAPTUR, Mr. WARD, Mr. MARKEY, Mr. STUPAK, Mr. WYNN, Mr. CUMMINGS, Mrs. MEEK of Florida, Ms. JACKSON-LEE of Texas, and Mr. JEFFERSON):

H.R. 4115. A bill to require the Director of the Federal Emergency Management Agency to study the feasibility of a Residential Windstorm Insurance Program designed to provide windstorm insurance to residential property owners unable to obtain coverage in the private market and to require a study by the Comptroller General of the United States, the Secretary of the Treasury, and the Secretary of Commerce to evaluate the public policy issues associated with conferring favorable Federal tax treatment to insurance reserves set aside by private insurers for future catastropic natural disasters; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. NADLER (for himself, Mr. SCHUMER, Mr. TOWNS, Mrs. MALONEY, and Ms. LOFGREN):

H.R. 4117. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. HANSEN:

H.R. 4118. A bill to amend the Antiquities Act to limit the authority of the President to designate areas in excess of 5,000 acres as national monuments, and for other purposes; to the Committee on Resources.

By Mr. CHAMBLISS:

H.R. 4119. A bill to designate the Federal building and U.S. courthouse located at 475 Mulberry Street in Macon, GA, as the ''William Augustus Bootle Federal Building and United States Courthouse''; to the Committee on Transportation and Infrastructure.

By Mrs. CHENOWETH (for herself and Mr. CRAPO):

H.R. 4120. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express act of Congress, and for other purposes; to the Committee on Resources.

By Mr. FRANK of Massachusetts:

H.R. 4121. A bill to amend title 18, United States Code, to penalize those who endanger children in hostage situations; to the Committee on the Judiciary.

By Mr. GUTIERREZ (for himself, Mr. EVANS, Mrs. MEEK of Florida, Mr. FILNER, Mr. DELLUMS, Mr. ABERCROMBIE, Ms. NORTON, Mr. SERRANO, Mr. CONYERS, Mr. FRANK of Massachusetts, Mr. HILLIARD, Ms. WATERS, Mr. STARK, Mr. TORRES, Mr. GONZALEZ, Mr. PASTOR, Mr. PAYNE of New Jersey, and Ms. ROYBAL-ALLARD):

H.R. 4122. A bill to rescind restrictions on welfare and public benefits for legal immigrants enacted by title 4 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to reduce corporate

welfare, to strengthen tax provisions regarding persons who relinquish U.S. citizenship, and for other purposes; to the Committee on Ways and Means.

By Mr. KENNEDY of Massachusetts:

H.R. 4123. A bill to amend certain provisions of law relating to child pornography, and for other purposes; to the Committee on the Judiciary.

By Mr. KLINK (for himself, Mr. MURTHA, Mr. LEWIS of Georgia, Mr. BARRETT of Wisconsin, Mr. OWENS, Mr. LAFALCE, Mr. HILLIARD, Mr. DELLUMS, and Mr. EVANS):

H.R. 4124. A bill to amend the Internal Revenue Code of 1986 to provide that the denial of deduction for excessive employee compensation shall apply to all employees and to expand the types of compensation to which such denial applies; to the Committee on Ways and Means.

By Mr. MILLER of California (for himself, Mr. ANDREWS, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. BERMAN, Mr. BLUMENAUER, Mr. BONIOR, Mr. BORSKI, Mr. BROWN of California, Mrs. CLAYTON, Mr. CONYERS, Mr. DEFAZIO, Mr. DELLUMS, Mr. DURBIN, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEJDENSON, Mr. GEPHARDT, Mr. GENE GREEN of Texas, Mr. GUTIERREZ, Mr. HEFNER, Mr. HILLIARD, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY of Massachusetts, Mr. LAFALCE, Mr. LANTOS, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. LOFGREN, Mr. MANTON, Mr. MARKEY, Mr. MCDERMOTT, Ms. MCKINNEY, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. MORAN, Mr. MURTHA, Mr. OBEY, Mr. OLVER, Mr. OWENS, Mr. PAYNE of New Jersey, Ms. PELOSI, Mr. RANGEL, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. SAWYER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SERRANO, Ms. SLAUGHTER, Mr. SPRATT, Mr. TORRICELLI, Mr. UNDERWOOD, Mr. VENTO, Mr. WATT of North Carolina, Ms. WOOLSEY, and Mr. YATES):

H.R. 4125. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce.

By Mr. BAKER of California (for himself, Mr. FAZIO of California, Mr. RADANOVICH, Mr. DOOLEY, Mr. RIGGS, Mr. MATSUI, Mrs. SEASTRAND, Mr. FARR, Mr. DREIER, Mr. FILNER, Mr. KIM, Mr. MILLER of California, Mr. CALVERT, Ms. HARMAN, Mr. BILBRAY, Ms. LOFGREN, Mr. GALLEGLY, Mr. STARK, Mr. PACKARD, Ms. PELOSI, Mr. MCKEON, Ms. ESHOO, Mr. HORN, Mr. DIXON, Mr. THOMAS, Mr. WAXMAN, Mr. COX, Mr. CONDIT, Mr. ROHRABACHER, Ms. ROYBAL-ALLARD, Mr. CUNNINGHAM, Mr. DELLUMS, Mr. HERGER, Mr. BROWN of California, Mr. LANTOS, Ms. WATERS, Mr. BERMAN, Ms. WOOLSEY, Mr. MARTINEZ, and Ms. MILLENDER-MCDONALD):

H.R. 4126. A bill to support the California-Federal [CALFED] Bay-Delta Program in developing, funding and implementing a balanced, long-term solution to the problems of ecosystem quality, water quality, water supply, and reliability, and system vulnerability affecting the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (the Bay-Delta) in California; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LINDER:

H. Res. 524. Resolution relating to a question of the privileges of the House; laid on the table.

By Mr. LEWIS of Georgia:

H. Res. 526. Resolution relating to a question of the privileges of the House; laid on the table.

By Mr. MCINTOSH:

H. Res. 527. Resolution relating to breast implants, the Food and Drug Administration, and public health; to the Committee on Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. YOUNG of Alaska:

H.R. 4116. A bill to provide for the issuance of a noncompetitive oil and gas lease for certain lands; to the Committee on Resources.

By Mr. MCNULTY:

H.R. 4127. A bill for the relief of David R. W. Light; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 103: Mr. WAMP and Mr. LANTOS.

H.R. 127: Mr. BRYANT of Tennessee.

H.R. 303: Mr. PALLONE.

H.R. 820: Mrs. MORELLA and Mr. SOUDER.

H.R. 878: Ms. LOFGREN.

H.R. 895: Mr. LEACH, Mr. HASTINGS of Washington, Mr. PETE GEREN of Texas, Mr. MASCARA, Mr. HAYWORTH, Mr. CLEMENT, and Mr. ENSIGN.

H.R. 974: Mrs. LOWEY.

H.R. 1073: Mr. RAMSTAD and Mr. BARCIA of Michigan.

H.R. 1074: Mr. RAMSTAD and Mr. FOX.

H.R. 1090: Mr. SCHIFF and Mr. LEWIS of Georgia.

H.R. 1161: Mr. HOUGHTON.

H.R. 1619: Mr. LONGLEY.

H.R. 2019: Mr. MASCARA.

H.R. 2152: Mr. SAXTON and Mr. CHAMBLISS.

H.R. 2450: Ms. DUNN of Washington.

H.R. 2508: Mr. PICKETT, Mr. NETHERCUTT, and Mr. CREMEANS.

H.R. 2535: Mr. HALL of Texas.

H.R. 2579: Mr. HOKE.

H.R. 2582: Mr. DAVIS.

H.R. 2585: Mrs. MORELLA.

H.R. 2651: Mr. NEUMANN.

H.R. 2741: Mrs. MEYERS of Kansas and Mrs. JOHNSON of Connecticut.

H.R. 2757: Mr. PASTOR.

H.R. 2979: Mr. BOEHLERT and Mr. BENTSEN.

H.R. 2992: Mr. KING.

H.R. 3142: Mrs. LINCOLN.

H.R. 3195: Mr. TAYLOR of Mississippi.

H.R. 3355: Mr. EVANS.

H.R. 3374: Ms. SLAUGHTER.

H.R. 3482: Mr. HILLIARD, Mr. MILLER of California, Mr. BARRETT of Wisconsin, and Mr. FROST.

H.R. 3522: Mr. RUSH, Miss COLLINS of Michigan, and Mr. SERRANO.

H.R. 3559: Mr. TRAFICANT, Mr. EHLERS, Mr. MCINTOSH, Ms. DUNN of Washington, Mrs. CHENOWETH, and Mr. MCHUGH.

H.R. 3601: Mr. PARKER, Mr. LAUGHLIN, Mr. LUCAS, Mr. STENHOLM, and Mr. MCCRERY.

H.R. 3631: Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MCCOLLUM, Mr. LEWIS of Georgia, Mr. DEAL of Georgia, Mr. WATT of North Carolina, Mrs. COLLINS of Illinois, and Mr. JACKSON.

H.R. 3654: Mr. NEY, Mr. BURTON of Indiana, and Mr. HOUGHTON.

H.R. 3714: Mr. DOOLEY, Mr. HASTINGS of Florida, Mr. BREWSTER, Mr. DURBIN, and Mr. EVANS.

H.R. 3766: Mr. ENGEL.

H.R. 3817: Mr. MYERS of Indiana, Mr. BRYANT of Tennessee, Mr. KLINK, Mr. SAXTON, Mr. POMBO, Mr. SOUDER, and Mr. HOLDEN.

H.R. 3831: Mr. TRAFICANT.

H.R. 3839: Mr. KENNEDY of Rhode Island, Mr. TRAFICANT, and Mr. SPRATT.

H.R. 3856: Mr. STUPAK.

H.R. 3937: Mr. STUMP, Mr. FRELINGHUYSEN, Mr. CRANE, Mr. FROST, Mr. PETE GEREN of Texas, and Mr. SANDERS.

H.R. 3996: Mr. WALSH.

H.R. 4001: Mr. SERRANO.

H.R. 4006: Mr. COX.

H.R. 4035: Mr. LIPINSKI and Ms. RIVERS.

H.R. 4046: Mr. TAYLOR of North Carolina, Mrs. MEEK of Florida, Mr. FILNER, and Mr. FROST.

H.R. 4047: Mr. ENSIGN, Mr. LEACH, Mr. DEUTSCH, Mr. GORDON, Mr. WAXMAN, Mrs. THURMAN, Mr. MILLER of California, Ms. SLAUGHTER, Mr. OLVER, Mr. DELLUMS, Ms. LOFGREN, and Mr. GEJDENSON.

H.R. 4068: Mr. STEARNS, Mr. HUTCHINSON, Mr. SMITH of New Jersey, Mr. KENNEDY of Massachusetts, Mr. FLANAGAN, Mr. CLEMENT, Mr. WELLER, Mr. FILNER, Mr. HAYWORTH, Mr. CLYBURN, Mr. COOLEY, Mr. DOYLE, Mr. MASCARA, Mr. BAESLER, Ms. BROWN of Florida, Mr. FOX, Mr. BARR, Mr. NEY, Mr. CALLAHAN, Mr. KOLBE, and Mr. SAM JOHNSON.

H.R. 4090: Mr. BUNNING of Kentucky.

H.R. 4102: Mr. BREWSTER, Mr. SMITH of Michigan, Ms. DANNER, Mr. EVANS, Mr. PASTOR, Mr. WATTS of Oklahoma, Mr. THORNBERRY, Mr. STENHOLM, Mr. BALDACCI, Mr. HOLDEN, Mr. OXLEY, Mr. THOMAS, Mr. BONO, Mr. WAMP, Mr. HOSTETTLER, and Mr. DINGELL.

H.R. 4111: Mr. BLUTE.

H.J. Res. 194: Ms. NORTON.

H. Con. Res. 63: Mr. FRELINGHUYSEN.

H. Con. Res. 175: Mr. GORDON.

H. Con. Res. 212: Mr. CHABOT.

H. Res. 491: Ms. ROYBAL-ALLARD, Mr. OWENS, and Mrs. LOWEY.

H. Res. 518: Miss COLLINS of Michigan, Mr. ABERCROMBIE, Mr. FRAZER, Ms. JACKSON-LEE, Mr. HASTINGS of Florida, Mr. THOMPSON, Mr. SCOTT, Mr. JEFFERSON, Mr. BISHOP, Mr. HILLIARD, Mr. LEWIS of Georgia, Mr. PAYNE of New Jersey, Ms. MCKINNEY, Ms. ROYBAL-ALLARD, and Ms. BROWN of Florida.

H. Res. 520: Mr. CLYBURN, Mr. BARRETT of Wisconsin, Mr. SANDERS, Ms. DANNER, Mr. DELLUMS, Mr. JACKSON, Mr. FATTAH, Mrs. MEEK of Florida, Mr. WYNN, Mr. FORD, Mr. TORRES, Mr. ORTIZ, Mr. TEJEDA, Mr. RUSH, Mr. EVANS, Mr. JEFFERSON, Mr. THOMPSON, Mrs. CLAYTON, Mr. BISHOP, Miss COLLINS of Michigan, Mr. GUTIERREZ, Mr. SERRANO, Mr. HASTINGS of Florida, Ms. BROWN of Florida, Ms. JACKSON-LEE, Ms. WOOLSEY, Ms. ROYBAL-ALLARD, Mr. BERMAN, Mr. MILLER of California, Mr. PAYNE of New Jersey, Mr. WAXMAN, Ms. SLAUGHTER, Ms. ESHOO, Ms. MCKINNEY, Mr. HINCHEY, Mr. STOKES, Mr. FAZIO of California, Mr. NADLER, Mr. ABERCROMBIE, Mr. ROSE, and Mr. SCOTT.

H. Res. 521: Mr. MATSUI, Mr. TRAFICANT, Ms. PELOSI, Mr. BOUCHER, Mrs. MALONEY, and Mr. FROST.